

THE
INDIAN COMPANIES ACT,
1913.

THE

INDIAN COMPANIES ACT

VII OF 1913

WITH NOTES, APPENDICES AND FORMS RELATING TO PRIVATE COMPANIES: TABLES OF CASES CITED, OF CORRESPONDING SECTIONS OF THE COMPANIES (CONSOLIDATION) ACT, 1908, AND OF STATUTORY DUTIES AND PENALTIES AND THE INDIAN COMPANIES RULES, AND RULES OF THE HIGH COURTS

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PREFACE TO THE SECOND EDITION.

THE only amendment of the Act of any importance (Act No. XI of 1914), which relates to the position of Directors and Agents of a Company, had already been passed when the Act came into force. Other amendments (*vide* Acts Nos. X of 1914 and XI of 1915) are formal. These have all been incorporated in this edition with such slight re-arrangement of the notes as the former amendment involves.

This volume also contains the statutory rules made by the Government of India, known as the Indian Companies Rules, and the Rules made by the High Courts at Calcutta and Bombay and the Chief Court of Lower Burma. These and the forms prescribed have been included *in extenso*, for though they all are founded upon the same model, they differ sufficiently to render it impracticable to combine them into one set of rules and forms to which the practitioner could refer with any degree of safety or convenience.

The High Courts at Madras and Allahabad had not framed any rules at the time when this edition was placed in the hands of the publishers. The Chief Court of the Punjab by a notification published on the 10th June, 1914, applied to the present Act, so far as they are consistent therewith, the rules

framed under the Indian Companies Act, 1882, subject to such modifications as might be necessary. It has not been thought desirable to increase the bulk of the book by the inclusion of rules with which practitioners in the Punjab have been long familiar.

All recent cases decided by the English Courts under the sections of the Companies (Consolidation) Act, 1908, have been referred to under the appropriate section.

The call for a second edition is the most gratifying assurance of the author's hope that his contribution, modest though it be, might be of practical value and assistance to those who, whether as laymen or experts, are interested in the complicated subject-matter of Company Law. With the end of the war, and the revival of commercial prosperity, for a while suspended, the operation of the Act is likely to cover an ever increasing number of ventures. It is trusted that this work, by its application of precedent to principle, may continue its sphere of utility, and thus justify what has been said to be the obligation of every lawyer to his profession, an addition to the library of the law.

BAR LIBRARY,
CALCUTTA,
June 1916.

P L B.

PREFACE TO FIRST EDITION.

In compiling this volume, which he hopes may prove of service both to the legal profession and to business men, the Author is fully conscious that he is journeying upon a well trodden path. He embarks, therefore, upon his undertaking with considerable diffidence. Companies Acts are arbitrary codes, designed to meet and regulate the growing necessities of modern commerce. The Indian Companies Act is itself to a very great extent a reproduction of the English Act of 1908, which consolidated the prior statute-law upon the subject. Any book on the Indian Companies Act must therefore necessarily deal with the English case-law. But this field has been exhaustively covered by the monumental treatises of those eminent specialists, Lord Justice Buckley and Sir Francis Palmer, from which the Author gratefully acknowledges the abundant assistance he has derived. His aim has been, by collecting the leading cases under the appropriate sections of the Indian Statute, to provide, for the lawyer a guide to further research, and for the layman a brief explanation of the cardinal principles of the Act.

Company law, in these days of rapid industrial development in India, is a branch of jurisprudence which must appeal to an ever-increasing lay public. Each year sees the birth of new companies, and the number is not likely to be diminished with the introduction into India of the private company. The advantages of a private company are now well recognised in England. In 1908, the year follow-

ing the first introduction in that country of the private company in its present form, 5,419 out of 7,184 companies registered were private companies. It cannot be supposed that in India the industrial and trading communities will be slow to avail themselves of the provisions of the Act in this respect. To this branch of the subject an appendix has been devoted, while forms of Memoranda and Articles of Association suitable for private companies, for permission to adapt and reproduce which the Author is indebted to Mr. Cecil W. Turner, of Lincoln's inn, and the Solicitors' Law Stationery Society, Limited, have been inserted.

A table of statutory duties and penalties under the Act has been compiled, in the hope that it may prove of assistance to those whose daily concern is the conduct of the affairs of public companies, and, to facilitate reference to the English text-books, the numbers of the corresponding sections of the English Act of 1908 have been inserted in the margin.

It may be permissible to anticipate the objection that the position of Managing Agents has not received adequate treatment. The Act itself makes no mention of them, except in so far as it defines the term "Manager." In their capacity of Managers the Act brings Managing Agents within its purview; in their capacity of Agents the law applicable is that of Principal and Agent, and not company law in its strict sense. Their position in each case, moreover, is dependent upon the company's Articles of Association, and the terms of any agreement that may subsist between themselves and the company by which they are appointed. General principles of universal application, affording solutions of the questions that may arise cannot, therefore, be readily stated. The Government of India proposes to pass a short Act, to come into force at the same time as the Indian Companies Act, dealing with some aspects

of the matter. The Bill has been published(a) and its object is to secure (1) that every company shall have Directors, (2) that the majority of the Directors of every company shall be independent of the Managing Agents, exception being made in the case of private companies and of companies in which the Managing Agents themselves hold a predominant voting power, (3) that interested Directors shall disclose their interest in contracts to the other Directors, and, in the case of contracts appointing Managing Agents or any variations of such contracts, to the shareholders, and (4) that in case of contracts by agents of a company, other than a private company in which the company is an undisclosed principal, a memorandum in writing of the terms of the contract shall be made and communicated to the company.

A detailed criticism of these proposals would be too lengthy for insertion here, but it may be pointed out that the clauses do not purport to give Directors any control over Managing Agents or *vice versâ*, and their mutual relations will still, notwithstanding the terms of the proposed Act, be governed, and their respective responsibilities to the Company will be fixed, by the general law, the Articles of Association and the terms of any special agreement as heretofore. The section relating to disclosure of a Director's interest does not affect Managing Agents otherwise than indirectly, as where a member of the Managing Agent's firms is also a Director, and the earlier part of the proposed section is an adaptation of the clause frequently inserted in a company's articles(b) permitting a Director to enter into contractual relations with his company upon disclosure of his interest. The sections of the proposed Act are complete in themselves, and do not involve any

(a) Gazette of India, Pt. v, April 26, 1913.
(b) Palmer's Company Precedents, 11th Edn., Pt. II, 731.

amendment of the sections of the main Act as recently passed, and, to a great extent, they only render compulsory the practice generally followed in preparing Articles of Association.

In conclusion, the Author desires to record his grateful appreciation of the advice and assistance he has received from several members of the legal profession and others.

BAR LIBRARY, P. L. B.
Calcutta, July, 1913.

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THE

INDIAN COMPANIES ACT, 1913.

ACT NO. VII OF 1913.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 27TH MARCH, 1913).

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other associations ; It is hereby enacted as follows :—

As the preamble states, the object of this Act is not only to amend but also to consolidate the law relating to Trading Companies, and in this latter respect the Act resembles the latest English Statute, the Companies (Consolidation) Act 1908 (8 Edw. 7, c. 69) which repealed either wholly or in part the twenty-eight Statutes enumerated in its sixth schedule. Though the activity of the Indian legislature has not resulted in a similar web of Statute-law, only to be unravelled by the lawyer with difficulty, and rendering the law highly obscure to the layman, still we find that the Indian law relating to companies has until recently been contained in six Statutes, all of which except one are repealed in their entirety(*a*). A more detailed examination of these six Acts emphasises the necessity for amendment, for, as appears from a comparison of the course of legislation in England and in this country, several important Statutes, of which the Companies (Winding-Up) Act, 1890 (53 & 54 Vict. c. 63), the Directors' Liability Act, 1890 (53 & 54 Vict. c. 64) are

(*a*) S. 290 and Sch. 4.

instances, have not been incorporated into the Indian Statute-book. We find, however, that as regards the principal Statutes legislation in England has been followed by legislation in India, and an examination into the history of company law in the latter country involves research into that in the former.

The earliest Act which requires notice is the Companies Act, 1844 (7 & 8 Vict. c. 110), which was intituled "An act for the registration, incorporation, and regulation of joint-stock companies" and applied, with certain exceptions, to every Joint-Stock Company, as therein defined, in the United Kingdom. The term 'Joint-Stock Company' comprehended: (1) Every partnership whereof the capital was divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the co-partners; (2) Every assurance company, as therein defined, including certain friendly societies, whether joint-stock companies or mutual assurance societies or both, and (3) every partnership which at its formation, or by subsequent admission (except any admission subsequent or devolution or any other act in law), should consist of more than twenty-five members. The Act also contained provisions for registration, and imposed certain requirements for incorporation, but did not confer limited liability upon the members of bodies which came under its provisions. In the year 1850, a similar Indian Statute was passed (Act XLIII of 1850), which provided that every unincorporated company of partners, associated under a deed containing a provision that the shares in the stock or business of the said company should be transferable without the consent of all the partners, and also every company established for some literary, scientific or charitable purpose, which did not carry on any business for the pecuniary benefit of any of the proprietors or shareholders, should be entitled to registration thereunder.

Power to obtain certificates of registration with limited liability on complying with its provisions was conferred by the Limited Liability Act, 1855 (18 & 19 Vict. c. 133), on companies thereafter formed under the Act of 1844 with a capital divided into shares of a nominal value of not less than £10 each, or already registered under the Companies Act, 1844.

The English Acts of 1844 and 1855 were repealed in 1856 by the Joint-Stock Companies Act, 1856 (19 & 20 Vict. c. 47).

This Act, from the operation of which banking companies were excluded, enable seven or more persons to form themselves into an incorporated company with or without limited liability by signing a memorandum of association and complying with the requirements of the Act. A form of articles of association, susceptible of modification, was provided, and upon incorporation the company became a body corporate with perpetual succession and a common seal. An amending Act, called the Joint-Stock Companies Act, 1857 (20 & 21 Vict. c. 14), was passed in the following year, but meanwhile the Indian Legislature introduced the principle of limited liability by an Act (Act XIX of 1857), the preamble of which stated that it was expedient to amend the law, and that the members of Joint-Stock Companies and other associations should be enabled to limit their liability for the debts and engagements thereof. This Act, like the English Statute, did not apply to banking companies and was in substantially the same terms as the English Act of 1856, and in these two Statutes we find company legislation beginning to assume the form in which it has since been handed down and upon which subsequent amendments have from time to time been engrafted.

The Joint-Stock Banking Companies Act, 1857 (20 & 21 Vict. c. 49) brought banking companies within the operation of the Act of 1856, except as regards limited liability, but this exception was removed by an amending Act passed in 1858 (21 & 22 Vict. c. 91), which *pro tanto* repealed the Joint-Stock Banking Companies Act, 1857. Following upon these amendments of the English law as regards banking companies an Indian Act (No. VII of 1860) was passed, whereby the restrictions contained in Act XIX of 1857 excluding banking companies from its operation were repealed, and subject to certain conditions they were enabled to register for limited liability.

The time was now ripe for a consolidating Act, and the Companies Act, 1862 (25 & 26 Vict, c. 89), a masterpiece of legislation, by which the Acts of 1844, 1856 and 1857 were repealed, was passed and continued to be the principal enactment regulating the law relating to companies until its repeal by the Act of 1908. A similar Statute was passed by the Indian legislature in 1866 (Act X of 1866). Amendments of the English Act of 1862 were effected by the Companies Act, 1867 (30 & 31 Vict. c. 131), which among other things, enabled a limited company by its memorandum of association to impose unlimited liability on its directors; by an Act of

1877 (40 & 41 Vict. c. 26), which was passed to remove doubt as to whether the power given to a company by the Act of 1867 to reduce its capital extended to paid-up capital; and by the Companies Act, 1879 (42 & 43 Vict. c. 76). The Indian Companies Act, 1882, substantially embodying the provisions of the English Statutes at that time in force was then passed and this Act, until its repeal by the Act of 1913, has occupied the same position in relation to the law governing companies in India as was filled by the English Act of 1862 in relation to English companies until it was ultimately repealed in 1908. Between the passing of the Indian Companies Act, 1882, and of the Consolidating Acts of 1908 and 1913 in England and India respectively, amendments were effected in both countries, but those in the latter country have been of minor importance.

The Indian Companies Act, 1882, was amended in 1887 by Act No. VI of 1887 which gave priority to certain classes of debts in a winding up, and by Act No. XII of 1891 some trifling amendments of a purely formal nature were made. Meantime, in the year 1890, no less than three important Statutes relating to companies were placed on the English Statute-book. The first of these (53 & 54 Vict. c. 62) gave power to a company to alter its objects or the form of its constitution, subject to confirmation by the Court, and upon the conditions imposed by the Act. The next was the Companies (Winding-Up) Act (53 & 54 Vict. c. 63) and, as its title implies, concerned itself solely with the liquidation of companies, and matters arising in winding up. The third was the Directors Liability Act, 1890 (53 & 54 Vict. c. 64) and aimed at fixing directors with liability for untrue statements in a prospectus. Of these three enactments only the first was reproduced by the Indian Legislature, *viz.*, by Act No. XII of 1895, known as the Indian Companies (Memorandum of Association) Act, 1895. The Companies Act, 1900 (63 & 64 Vict. c. 48) established with greater certainty the conclusiveness of the certificate of incorporation; among other things it placed restrictions on the appointment of a director by the articles of association in the case of a company inviting the public to subscribe for its shares, it imposed restrictions upon allotment, it permitted a company to pay underwriting commission subject to certain conditions, and it stated specific requirements as to the contents of a prospectus. The law was further amended by the Companies Act, 1907 (7 Edw. 7, c. 50) which embodied a new feature of wide-reaching importance. By this Act two or more persons were enabled to register them-

selves as a private company, an amendment of the law the effect of which is discussed more fully elsewhere. The provisions of the earlier Statutes as to prospectus and allotment were amended and amplified, and sections of the Act of 1900 relating to auditors and to registration of mortgages and charges were repealed and others substituted. A company established outside, but having a place of business within the United Kingdom was required to file with the registrar a copy of its instrument of constitution, a list of directors, and the name and address of a person resident in the United Kingdom authorised to accept on its behalf service of notices and process. The only amendment of the law relating to companies passed by the Indian legislature during these years was a short Act passed in 1900 (Act IV of 1900) similar to the Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30), enabling a company to keep a branch register in the United Kingdom. Another short amending Act was passed in 1910 (Act No. IV of 1910), which adopted secs. 9 and 15 of the Companies Act, 1907, and gave power to a company to pay interest out of capital and to re-issue redeemed debentures in certain cases.

Though the foregoing note does not profess to treat of company legislation in the United Kingdom more than superficially, it will serve to trace the influence of such legislation upon the Statute-law of India relating to companies. The Act of 1862 had been amended and extended by no less than eighteen Acts, so that to know how the law stood had become a task difficult for the lawyer and practically impossible for the layman. In place of this mosaic of legislation was passed the Companies (Consolidation) Act, 1908 (7 Edw. 7, c. 69), which is but little more than a consolidation of the law previously existing.

The absence of company legislation in India, except in a few minor details, since the Act of 1882 was passed has saved the Indian public and professional classes from some of the difficulty until lately attendant upon research into company law in the United Kingdom, but lapse of time has made drastic amendment of the law necessary in order to bring it into conformity with modern usage. This has now been done by the Indian Companies Act, 1913, which has taken for its model the Companies (Consolidation) Act, 1908, upon which it is principally based.

The Indian Act though it consolidates the law, amends it to a greater degree, since many sections which in the English

Act merely reproduce earlier legislation, in the Indian Act introduce law entirely new to India, there not having been the intermediate legislation which in England has compelled consolidation. The nature of such amendments generally has already been indicated by reference to the English Statutes which the English Act consolidated. The position may therefore very briefly be summarised by saying that the Companies Act, 1862, was reproduced in India by the Indian Companies Act, 1866. This latter Act gave way to the Indian Companies Act, 1882. The Companies (Consolidation) Act, 1908, replaced the Act of 18C2 and the several Acts by which it had been amended and supplemented, and has provided the model and foundation for the Indian Companies Act, 1913.

In the circumstances two questions suggest themselves; how far the decisions on the Companies Act, 1862 to 1907, may be resorted to for the purpose of interpreting the Companies (Consolidation) Act, 1908, and how far such decisions and decisions on the Companies (Consolidation) Act 1908, may be resorted to for the purpose of interpreting the Indian Companies Act, 1913?

In answer to the first of these questions the observations of Lord Herschell in *Bank of England* v. *Vagliano*(a), may be quoted. His Lordship said :—" I think the proper course is, in the first instance, to examine the language of the Statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute intended to embody in a Code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a Statute surely was that, on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that recourse may never be

(a) 1891, A. C. 144.

had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate; or, again, if in a Code of the law of negotiable instruments, words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the Code. I give these as examples merely, they, of course, do not exhaust the category. What, however, I am venturing to insist upon is that the first step taken should be to interpret the language of Statute, and that an appeal to earlier decisions can only be justified on some special ground."

But "where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them without any alteration in a subsequent Statute, I conceive that the Legislature must be taken to have used them according to a meaning which a Court of competent jurisdiction has given to them(*a*)." But when the later Statute contains language not to be found in the earlier, judicial interpretation of the earlier Act cannot be relied upon as a guide to the later(*b*). It follows therefore that the right to refer to cases decided under the earlier Statutes, where the language is the same, cannot be questioned.

The reply to the second question hardly requires elaboration. The practice of all Courts in India to refer to and rely upon English authorities is well established; where the sections of the Indian Statute are in the same terms as its English counterpart, which in its turn repeats those contained in earlier enactments, the principle of the cases quoted will apply.

PART I.

PRELIMINARY.

[Secs. 295-296.] (*c*) **1.** (*1*) This Act may be called the Indian Companies Act, 1913. **Short title, commencement and extent.**

(*a*) *Per* James, L. J. in *ex parte Campbell*, 5 Ch. 703, 706; cf. Blackburn, J. in *Mersey Docks* v. *Cameron*, 11 H. L. C. 443, 480, to the same effect.

(*b*) *Thomas* v. *United Butter Companies of France Ltd.* (1909) 2 Ch. 484.

(*c*) The marginal references in brackets are to the corresponding sections of the Companies (Consolidation) Act, 1908, (8 Edw. 7, c. 69).

(2) It shall come into force on the first day of April, 1914; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

Definitions. [Sec. 285.]

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the schedule annexed to Act No. XIX of 1857 or in Table A in the first schedule annexed to the Indian Companies Act, 1882, or in Table A in the first schedule annexed to this Act:

(2) "company" means a company formed and registered under this Act or an existing company:

(3) "the Court" means the Court having jurisdiction under this Act:

(4) "debenture" includes debenture-stock:

(5) "director" includes any person occupying the position of a director by whatever name called:

(6) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction:

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882:

(8) "Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses:

(9) "manager" includes any person occupying the position of a manager by whatever name called and whether under a contract of service or not:

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act:

(11) "officer" includes any director, manager or secretary but, save in sections 235, 236, and 237, does not include an auditor:

(12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and as respects the other provisions of this Act, prescribed by the Governor-General in Council:

[Sec. 121 (1). (2.)] (13) "private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and

(ii) continues to observe such restrictions, limitations, and prohibitions:

Provided that, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be considered as a single member:

[Sec. 285.] (14) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company:

(*15*) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies: and

(*16*) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

The definition of company includes an existing company as defined in sub-sec. 7. Hence all companies formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby, or under the Act of 1882 and carrying on business in all parts of India are brought within the provisions of the Act of 1913. But the application of the Act to existing companies is subject to (1) the words, "unless there is anything repugnant in the subject or the context," which take the place of the words "unless the context otherwise requires" in section 285 of the English Act, (2) section 250 which deals with its application to existing companies, and (3) section 290. The effect of the words "unless the context otherwise requires" was considered in an application relating to a proposed transfer under section 213. It was decided that the transferee company referred to in the section was bound, under the interpretation-clause, to be a company formed and registered under the Act of 1908 or the earlier Statutes, and that the context did not entitle the Court to put a construction upon the section justifying a sale of the business to a foreign company. Hence a sale to a company domiciled abroad, owing to the interpretation-clause had become *ultra vires*(*a*) though an earlier decision(*b*) on the similar section in the Act of 1862, which, however, did not contain the interpretation-clause, had held such a sale to be *intra vires*. The application of the Act to companies registered but not formed under the earlier Acts or under the Act of 1913 is dealt with by sections 251, 253, and 266.

The definitions of "manager" and "officer" are new and do not occur in the English Act. *De facto* directors are liable for any of commission or any omission on their part in the same manner and to same extent as if they are *de jure*

(*a*) *Thomas* v. *United Butter Co.* (1909) 2 Ch. 484.
(*b*) *Irrigation Co. of France*, 6 Ch. 176.

as well as *de facto* directors(*a*). The same is the case as regards managers (*b*).

Jurisdiction of the Courts.

3. (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Local Government may, by notification in the local official *Gazette* and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) For the purposes of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court (*c*).

[Sec. 131 (7)].

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition of partnerships exceeding certain number.

4. (*1*) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of

[Sec. 1.]

(*a*) *Coventry and Dixon's case*, 14 Ch. D. 660, 670.
(*b*) *Gibson* v. *Barton*, L. R. 10 Q. B. 329; followed in *Rex* v. *Lawson*, (1905) 1 K. B. 541.
(*c*) See *In re Southsea Garage*, 27 T. L. R. 295, as to the construction of this sub-section.

carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or of Royal Charter or Letters Patent.

(*2*) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or of Royal Charter or Letters Patent.

To bring a company, association, or partnership within the section, *first* it must be formed for the purpose of carrying on a business; *secondly*, that business must have for its object the acquisition of gain(*a*). An association formed in violation of the prohibitions contained in the section is an illegal association. It cannot sue(*b*), or be sued(*c*), nor can it enter into contracts(*d*) or be wound up(*e*). The meaning of the word "gain" has been the subject of judicial decision. "If you come to the meaning of the word 'gain,' it means acquisition. It has no other meaning that I am aware of. Gain is something obtained or acquired. It is not limited to pecuniary gain. We should have to add the word 'pecuniary' so to limit it. And still less is it limited to commercial profit. The word used, it must be observed, is not 'gains,' but 'gain,' in the singular. Commercial profits, no doubt, are gain, but I cannot find anything limiting gain simply to a commercial profit. I take the word as referring to a company which is formed to acquire something, or in which the individual members are to acquire something,

(*a*) *Kraal* v. *Whymper*, I. L. R. 17 Cal. 786.

(*b*) *In re Day*, 1 Ch. D. 699; *Shaw* v. *Benson*, 11 Q. B. D. 563.

(*c*) *London Marine Association*, 8 Eq. 176; *Hume* v. *Record Reign Jubilee Synd*, 80 L. T. 404.

(*d*) *Jennings* v. *Hammond*, 9 Q. B. D. 229.

(*e*) *South Wales Atlantic, etc., Co.*, 2 Ch. D. 763; *re Padstow Association*, 20 Ch. D. 137; *e. p. Hargrove*, 6 Ch. 542; *Ilfracombe Building Soc.* (1901), 1 Ch. 102.

as distinguished from a company formed for spending something and in which the individual members are simply to give something away or to spend something, and not to gain anything(*a*)."

Memorandum of Association.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either— **Mode of forming incorporated company.** [Sec. 2.]

(*i*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(*ii*) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(*iii*) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

(*a*) *Per* Jessel M. R. in *Arthur Average Assoc.* 10 Ch. 545.

The essentials of an association within the meaning of the section have been considered in *In re Thomas,* 14 Q. B. D. 379; *Smith* v. *Anderson,* 15 Ch. D. 247; *One and All Sickness Assoc.* 25 T. L. R. 674; *Wingfield* v. *Potter,* 45 L. T. 612; *Crowther* v. *Thorley,* 50 L. T. 43, *re Siddall,* 29 Ch. D. 1 and in *Panchena Manchu Nayar* v. *Gadinhare Kamaranchath Padmanabhan Nayar,* I. L. R. 29 Mad. 477, which was a case of a chit fund

The extent of the respective interests of the seven persons is immaterial. The Act says nothing "as to the extent or degree of interest which may be held by each of the seven, or as to the proportion of interest, or influence, possessed by one or the majority of the shareholders over the others(a)." A company formed and registered under the Companies Act has a real existence with rights and liabilities as a separate legal entity. It is a different person altogether from the subscribers to the memorandum or the shareholders on the register. Once it is validly constituted it is an artificial creation of the Legislature and it retains its existence for all intents and purposes. It is a living thing with a separate existence which cannot be swept aside as a technicality. It is not a mere name or mask or cloak or device to conceal the identity of persons. It is a legal body clothed with the form prescribed by the Legislature(b).

Memorandum of company limited by shares. [Sec. 3.]

6. In the case of a company limited by shares—

(*1*) the memorandum shall state—

(*i*) the name of the company, with "Limited" as the last word in its name;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the objects of the company;

(*iv*) that the liability of the members is limited;

(*v*) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

created by an agreement between more than twenty persons; cf. *Bipul Chandra Gupta* v. *Hazi Nasib Ali Mozumdar,* 13 C. W. N. 638; *Vasudevan Nambudri* v. *Mammod,* I. L. R. 22 Mad. 212; *Madras Hindu Mutual Benefit Permanent Fund* v. *Ragnon Chetti,* I. L. R. 19 Mad. 200; and *Ramasami Bhagavathar* v. *Nagendrayyan,* I. L. R. 19 Mad. 31; which are instances of illegal associations.

(*a*) *Per* Lord Halsbury in *Salomon* v. *Salomon & Co.* 1897, A. C. 22.

(*b*) *Continental Tyre, etc. Co.* v. *Daimler Ltd.* (1915) 1 K. B. 893, in which it was held that a company incorporated in England and having its registered office in London, of which all the directors were German subjects, and of which the whole of its shares (except one) were held by German subjects residing in Germany, was an English Company. This case is now under appeal to the House of Lords.

(2) no subscriber of the memorandum shall take less than one share:

(3) each subscriber shall write opposite to his name the number of shares he takes.

[Sec. 4.] 7. In the case of a company limited by guarantee— **Memorandum of company limited by guarantee.**

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) the province in which the registered office of the company is to be situate;

(iii) the objects of the company;

(iv) that the liability of the members is limited;

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount:

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) no subscriber of the memorandum shall take less than one share;

(*iii*) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of unlimited company. [Sec. 5.]

8. In the case of an unlimited company—

(1) the memorandum shall state—

(*i*) the name of the company;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the objects of the company;

(2) if the company has a share capital—

(*i*) no subscriber of the memorandum shall take less than one share;

(*ii*) each subscriber shall write opposite to his name the number of shares he takes.

The memorandum of association of a company is its charter and defines the limitation of the powers of a company established under the Act. The objects of a company proposed to be incorporated under the Act, as stated in the memorandum, cannot be departed from except so far as the Act permits of change(*a*). The doctrine of *ultra vires* as explained in *Ashbury Railway Carriage Co.* v. *Riche* was re-affirmed by the House of Lords in *Att.-Gen.* v. *G. E. R. Co.*(*b*), but in the latter case Lord Selborne, L. C., laid it down that the doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon those things which the Legislature has authorised, ought not (unless expressly prohibited), to be held, by judicial construction, to be *ultra vires*, and, as stated by Lord Halsbury, L. C. in *London County Council* v. *Att.-Gen.*(*c*), those two cases constitute the law upon the subject. But the articles of association may be referred to for the purpose

(*a*) *Ashbury Railway Carriage Co.* v. *Riche*, L. R. 7 H. L. 653, 668; *Shamnugger Jute Factory Co.* v. *Ram Narain Chatterjee*, I. L. R. 14 Cal. 189.

(*b*) 5 A. C., 473.

(*c*) 1902, A. C. 165. For instances of *ultra vires* transactions, see Palmer's Company Precedents, 11th Ed., Pt. 1, pp. 465, 466.

of explaining the memorandum (*a*). The objects of a company are set out in the memorandum and must not contravene the general law or the Act itself(*b*). The memorandum of association frequently divides the shares into different classes with different rights appertaining to each class. But even if it is silent with regard to preference shares, it is now settled that a company may by special resolution alter its articles, where they do not contain the requisite authority, so as to authorise the directors to issue preference shares by way of increase of capital (*c*). But where as a matter of fact the rights of the classes of shareholders have been fixed by the memorandum of association they cannot be altered(*d*) unless power is reserved so to do(*e*). It is no part of the function of the memorandum of association to define under the corporate objects the distribution of the assets of the company in a winding up(*f*). Agreements purporting to have been made on behalf of the company before incorporation, commonly called preliminary contracts, are usually referred to by proper clauses inserted in the memorandum and articles which direct or empower the directors to execute and carry the same into effect(*g*). A company cannot ratify such agreements and unless there is such a novation the person purporting to contract on the company's behalf will be personally liable(*h*). Where the directors intend to do things which are *ultra vires* the company, a shareholder may bring an action to restrain them(*i*).

Signature of memorandum.

9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

[Sec. 6.]

The witness must be "some person who stands by but is not a party to the transaction (*j*)."

(*a*) *South Brazilian, etc. Ry. Co.* (1905) 2 Ch. 78.

(*b*) Cf. *Ooregum Co.* v. *Roper*, 1892, A. C. 125, where one of the objects was to issue shares at a discount.

(*c*) *Andrews* v. *Gas Meter Co.* (1897) 1 Ch. 361 ; *Chithambaram Chettiar* v. *Krishna Aiyangar*, I. L. R. 33 Mad. 36.

(*d*) *Ashbury* v. *Watson*, 30 Ch. D. 376.

(*e*) *Welsbach Incandescent Gas Lighting Co.* (1904) 1 Ch. 87.

(*f*) *Bisgood* v. *Henderson's Transvaal Estate Co.* (1908) 1 Ch. 743.

(*g*) Palmer's Company Precedents, 11th Ed., Pt. 1, pp. 147, 148, 322, 331.

(*h*) *Kelner* v. *Baxter*, L. R. 2 C. P. 174.

(*i*) *Moseley* v. *Koffyfontein Mines*, (1911) 1 Ch. 73 ; 1911, A. C. 409.

(*j*) *Per* Lord Selborne in *Seal* v. *Claridge*, 7 Q. B. D. 516.

Restriction on alteration of memorandum.

[Sec. 7.]

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

The exceptions to the positive prohibition contained in the section are to be found in section 11, which provides for the change of the company's name; in section 12, which deals with alterations of the objects of a company and the change of the place of the registered office from one province to another; in section 50, which gives power to a company to alter its share capital; in section 54, which permits a company to modify the conditions contained in its memorandum so as to re-organize its share capital; in section 55, which deals with reduction of share capital; and in section 71, under which a company may alter its memorandum so as to render unlimited the liability of its directors.

Name of company and change of name.

[Sec. 8.]

11. (*1*) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(*2*) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(*3*) A company shall not be registered by a name which contains any of the following words, namely:— "Crown," "Emperor," "Empire," "Empress," "Imperial," "King," "Queen," "Royal," or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India

or a Local Government, except where the Governor-General in Council signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to the Government of India:

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(4) Any company may, by special resolution and subject to the approval of the Local Government signified in writing, under the hand of one of the Secretaries to such Government, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Whether a trading concern is incorporated or not, and therefore whether its name is or is not registered, the Court will not allow another concern to carry on the same trade under a name so similar as to be calculated to deceive(a). This section consequently supplements the ordinary rule under which the Court acts(b). In recent case the Court refused to interfere when the registrar had declined to register a company with the name "The Water Softening Materials

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(a) *Hendriks* v. *Montagu*, 17 Ch. D. 638, and *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.* (1898) 1 Ch. 539; 1899, A. C. 83; Palmer's Company Precedents, 11th Ed. Pt. I. pp. 450-453.

(b) *British Vacuum Cleaner Co.* v. *New Vacuum Cleaner Co.* (1907) 2 Ch. 312; *Electromobile Co.* v. *British Electromobile Co.* 97 L. T. 196, are instances of this.

Company (Sofnol) Ltd." on the ground that the name so nearly resembled that of a company registered with the name "Water Softeners, Ltd." as to be calculated to deceive(*a*).

The Act prohibits the use of certain words in the name of a company and it is conceived that the use of the word "Government" would also probably not be permitted. In England the sanction of the Home Office is requisite for the use of the word "Royal(*b*)."

Alteration of memorandum.

[Sec. 9.]

12. (*1*) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province to another, or with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum.

(*2*) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(*a*) *Rex* v. *Registrar of Companies*, (1912) 3 K. B. 23. See also *Ouvah Ceylon Estates* v. *Uva Ceylon Rubber Estates*, 103 L. T. 146.

(*b*) Halsbury's Laws of England, Vol. V, p. 84; Palmer's Company Precedents, 11th Ed., Pt. I, p. 454.

(3) Before confirming the alteration the Court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Power of Court when confirming alteration.

13. [Sec. 9 (4).] The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Exercise of direction by Court.

14. [Sec. 9 (5).] The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interest of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such direction and make such orders as it may

think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

Procedure on confirmation of the alteration.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

[Sec. 9 (6).]

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

(3) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

Effect of failure to register within three months.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section **15**, and if such registration is not effected within three months

next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

The Act provides that the order shall be null and void if not filed within the time allowed, in lieu of the penalty which the English Statute imposes.

In order to obtain the necessary order the case must come within one or more of clauses (g) to (e) of section 12. Instances of such cases are cited below(*a*).

Articles of Association.

Registration of articles.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

[Sec. 10.]

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule.

(*a*) Clauses (a) and (b); *Government Stock Investment Co.* (No. 2), (1892) 1 Ch. 597; *Reversionary Interest Soc.* ibid., 615; *New Westminster Brewery Co.*, 1911, W. N. 247; *Anglo-American Telegraph Co.*, 1911, W. N 248; Clause (c); *Indian Mechanical Gold Extracting Co.* (1891) 3 Ch. 538; Clause (d); *Cyclists Touring Club*, (1907) 1 Ch. 269; *Alliance Marine Ass. Co.* (1892) 1 Ch. 300; *National Boiler Insurance Co.* (1892) 1 Ch. 306; *Empire Trust*, 64 L. T. 221; *Ulster Marine Co.* 27 L. R. Ir. 487; Clause (e); *Jewish Colonial Trust*, (1908) 2 Ch. 287; see also Palmer's Company Precedents, 11th Ed. Pt. I, pp. 1311, 1312, 1313.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application of Table A.

[Sec. 11.]

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and signature of articles.

[Sec. 12.]

19. Articles shall—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively; and

(*c*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution.

[Sec. 13.]

20. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid

as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

The articles of association are the regulations of the company and are binding until altered in the manner prescribed by the Act(*a*). Companies in India where the system of employing managing agents obtains, do not, as a rule, adopt the regulations contained in Table *A*, but provide themselves with articles of association more suited to their special requirements. Such articles undoubtedly will be found to coincide with Table *A* in many respects, and where an article is the same in principle as an article contained in Table *A*, the sanction of the Legislature to the latter precludes it from being *ultra vires*(*b*).

The articles of association can be altered by passing a special resolution in the manner laid down by sec. 81, subject to any special provisions in that behalf contained in the articles of association themselves, and the right of alteration of the articles is unrestricted, subject, however, to certain limitations. The alterations must not contravene any of the provisions of the Statute itself or of the conditions contained in the company's memorandum of association ; the powers of alteration must, further, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities,

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(*a*) *Dexine Patent Packing Co.* 88 L. T. 791 ; *Bombay Burma Trad. Corp.* v. *Dorabji C. Shroff*, I. L. R. 10 Bom. 415, 420.

(*b*) *Lock* v. *Queensland Investment and Land Mortgage Co.* 1896, A. C. 461, 465.

and they must be exercised *bonâ fide* for the benefit of the company as a whole and must not be exceeded(*a*). A company cannot contract itself out of its statutory right to alter its articles, even by an agreement independent of and outside the articles of association(*b*). Nor can it by the introduction into its articles of clauses to that effect, deprive itself of such statutory right(*c*). A Company will be restrained by injunction from altering its articles for the purpose of committing a breach of contract(*d*).

The Act contains numerous sections conferring powers on a company, "if so authorized by its articles(*e*)." Unless, there fore, authorized by the articles a company will not be able to exercise such powers, and where a company desires to exercise powers not conferred by its articles of association or by Statute it must first alter its articles in order to take such powers(*f*).

Though the Act lays down stringent provisions as to the form and registration of articles of association, yet in one case unsigned articles, irregularly registered, but published and acted on without objection for nineteen years were treated as valid and operative, and as having been adopted by the shareholders(*g*).

General Provisions.

Effect of memorandum and articles.

21. (*1*) The memorandum and articles shall, [Sec. 14.] when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each

(*a*) *Allen* v. *Gold Reefs*, (1900) 1 Ch. 656, 671, ; *Peveril Gold Mines*, (1898) 1 Ch. 122 ; *Payne* v. *Cork Co.* (1900) 1 Ch. 308 , Palmer's Company Precedents, 11th Ed , Pt. 1, pp. 630—632.

(*b*) *Punt* v. *Symons & Co* (1903) 2 Ch. 506 ; *British Equitable Ass. Co.* v. *Baily*, 1906, A. C. 35, 42.

(*c*) *Walker* v. *London Tramways Co* , 12 Ch. D 705 ; *Malleson* v. *National Insce. Co.* (1894) 1 Ch. 200.

(*d*) *British Murac Synd.* v *Alperton Rubber Co.* (1915) 2 Ch. 186.

(*e*) Such powers are :—

S. 41. To keep a branch register in the United Kingdom.
S. 43. To issue share warrants to bearer.
S. 46. To include bearers of share warrants as members.
S. 49. To arrange for different amounts being paid on shares.
S. 50. To alter its share capital.
S. 55. To reduce its share capital.
S. 66. To increase or reduce its share capital. (This section applies to a company limited by guarantee.)
S. 71. To alter its memorandum so as to render the liability of directors unlimited.

(*f*) *Imperial Hydropathic Co.* v. *Hampson*, 23 Ch. D. 1 ; *Boschoek Proprietary Co.* v. *Fuke*, (1906) 1 Ch. 148.

(*g*) *Ho Tung* v. *Man On Insce. Co.* 1902, A. C. 232.

member and contained a covenant on the part of each member, his heirs, and legal representatives to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

The articles constitute a contract between each member and the company(*a*), and they bind the company and the shareholders as much as if they had put their seals to them(*b*). It has been judicially stated that they also constitute a contract between each individual shareholder and every other(*c*), but Lord Herschell laid it down" that there is no contract in terms between the individual members of the company; but the articles do none the less, in my opinon, regulate their rights *inter se*(*a*)." Hence, it follows, that the ordinary rule is that a suit for breach of the articles must be by the company(*d*).

The articles do not bind the company in relation to any person not a member(*e*), though they do in relation to a shareholder, *i.e.*, member, where the rights of the member are conferred by the articles(*f*). But the rule is not so clear where the rights of the member are conferred upon him by the articles in some capacity other than as a member. Though it has been held that in such cases the member cannot rely upon the articles (*g*), the later authorities have regarded the articles as constituting the basis of the contract with him(*h*), and the

(*a*) *Welton* v. *Saffery*, 1897, A. C. 299, 315; cf. *Bradford Bank* v. *Briggs*, 12 A. C. 29.

(*b*) *Imperial Hydropathic Co.* v. *Hampson*, 23 Ch. D. 1

(*c*) *Wood* v. *Odessa Waterworks Co.* 42 Ch. D. 636.

(*d*) *Burland* v. *Earle*, 1902, A. C. 83, 93, followed in *Dominion Cotton Mills Co.* v. *Amyot*, 1912, A. C. 546.

(*e*) *Rotherham Chem. Co.*, 25 Ch. D. 103; *Melhado* v *Porto Alegre. Co.* L. R. 9 C. P. 503.

(*f*) *Johnson* v. *Lytle's Iron Agency*, 5 Ch. D. 687; *Crum* v. *Oakbank Co.* 8 A. C. 65; *Wood* v. *Odessa Waterwork Co.* 42 Ch. D. 636; *Burdett* v. *Standard Exploration Co.* 16 T. L. R. 112. See *Hickman* v. *Kent etc., Assoc.* (1915) 1 Ch. 881, where the foregoing cases were considered.

(*g*) *Eley* v. *Positive, etc., Co.* 1 Ex. D. 20, 88; *Browne* v. *La Trinidad Co.* 37 Ch. D. 1; cf. *Ahmedabad Jubilee Co.* v. *Chhotalall Chhaganlal*, 10 Bom. L. R. 141.

(*h*) *Swabey* v. *Port Darwin Gold Co.*, 1 Meg 385; *International Cable Co.* 66 L. T. 254; *e. p. Beckwith*, (1898) 1 Ch. 324.

principle has been extended to persons other than members(*a*). But the House of Lords decided in the case of a Life Assurance Company that the company could alter its by-laws and alter its practice in the distribution of profits, and thereby vary its contract with a policy-holder(*b*).

Registration of memorandum and articles.

22. The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

[Sec. 15.]

Effect of registration.

23. (*1*) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company, that the company is limited.

[Sec. 16.]

(*2*) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

The body corporate in a legal *persona*, just as much as an individual(*c*); a corporation is not a mere aggregate of

(*a*) *Isaac's case*, (1892) 2 Ch. 158; *Salisbury Jones' case* (1894), 3 Ch. 356.

(*b*) *British Equitable Ass. Co.* v. *Baily*, 1906, A. C. 35. See note on this case in Palmer's Company Law, 9th Edn. 429. It appears that one of the conditions endorsed on the policy was that the funds of the company should be liable after satisfying all prior claims and charges "according to the provisions of the deed of settlement and the by-laws of the company for the time being."

(*c*) *Sheffield and South Yorkshire Building Society*, 22 Q. B. D. 470, 476.

shareholders(*a*), and is a different thing from the individuals who compose it(*b*), a difference which was emphasised by the recent case of *The Continental Tyre, etc. Co. Ltd.* v. *Daimler Co. Ltd.*(*c*) where all the individual directors and all the individual shareholders (except one) were alien enemies. An incorporated company's assets are its property and not the property of the shareholders for the time being(*d*). The interest which a shareholder has in an incorporated company is not an interest in its property, including its business or good-will, but is merely a right to have a share of the profits of the company when realised and divided amongst its members(*e*). Any liability which a company incurs is therefore not the liability of the individual shareholders, and a creditor of the company has no debtor but that impalpable thing the corporation, which is a mere abstraction of law(*f*). A member of the corporation for the purposes of a suit against it is as distinct from the corporate body as any third person (*g*), and a sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself (*h*).

From the date of incorporation the company is capable forthwith of exercising all the functions of an incorporated company. This implies a power to act by agents, for the company itself cannot act in its own person, for it has no person(*i*), and accordingly provisions for the appointment of directors, managers, managing agents or other persons to act as agents on behalf of the company are generally contained in the articles of association. The scope and extent of the powers and duties of the agents of the company are limited and defined by the memorandum and articles of association. The principles of the law of agency are applicable, notwithstanding that the principal is a corporation (*j*) and companies

(*a*) *Flitcroft's case*, 21 Ch. D. 519, 536.

(*b*) *John Foster and Sons* v. *Commrs. of Inland Revenue*, (1894) 1 Q. B. 516, 530; *Farrar* v. *Farrars, Ltd.* 40 Ch. D. 395, 410.

(*c*) (1915) 1 K. B. 893.

(*d*) *In re George Newman & Co.* (1895) 1 Ch. 674, 685.

(*e*) *Bank of Hindustan* v. *Alison*, L. R. 6 C. P. 54, 73.

(*f*) *G. E. R. Co.* v. *Turner*, 8 Ch. 149, 152.

(*g*) *Dunston* v. *The Imperial Gas Light Co.* 3 B. & Ad. 125, 132.

(*h*) *Farrar* v. *Farrars Ltd.*, 40 Ch. D. 395, 409; *John Foster & Sons* v. *Commrs. of Inland Revenue*, (1894) 1 Q. B. 516, 528; *N. W. Transport. Co.* v. *Beatty*, 12 A. C., 589.

(*i*) *Ferguson* v. *Wilson*, 2 Ch. 77, 89.

(*j*) *Houldsworth* v. *City of Glasgow Bank*, 5 A. C. 317, 326, *Barwick* v. *English Joint Stock Bank*, L. R. 2, Ex. 259; *Ranger* v. *G. W. R. Co.* 5 H. L. C. 86.

are liable for the torts and negligence of their agents, "for a body corporate never can either take care or neglect to take care, except through its servants(*a*)." As regards criminal offences, as it is essential that there should be something in the nature of a *mens rea*, in ordinary cases a corporation cannot be guilty of a criminal offence. But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where an act is absolutely forbidden by law under a penalty and if it is done the offender is liable to a penalty whether he had any *mens rea* or not. In such a case a master who has done the forbidden thing through his servant is responsible and liable to a penalty, and exactly the same principle applies in the case of a corporation(*b*). In this connection it is to be observed that under the General Clauses Act, 1897(*c*), the word "person" including any company or association or body of individuals, whether incorporated or not(*d*).

Conclusiveness of certificate of incorporation.

24. (*1*) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

[Sec. 17.]

(*2*) A declaration by an advocate, attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

(*a*) *Per* Lord Blackburn in *Mersey Docks Trustees* v. *Gibbs*, L. R. 1 H. L. 93, 104.

(*b*) *Pearks, Dunston and Tee Ltd.* v. *Ward*, (1902) 2 K. B. 1, 11.

(*c*) Act X of 1897, sec. 3 (39); c. p. *Willmott* v. *London Road Car Co.* (1910) 1 Ch. 754.

(*d*) *Vide* Palmer's Company Precedents, 11th Ed. Pt. 1 pp. 27-44.

For form of declaration, see Schedule to the Indian Companies Rules, 1914, Form 1.

Under the Act, the certificate of the registrar is not merely *primâ facie* but conclusive evidence, and once given nothing is to be inquired into as to the regularity of the previous proceedings(*a*).

Copies of memorandum and articles to be given to members.

25. (*1*) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

[Sec. 18.]

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

Associations not for Profit.

Power to dispense with "Limited" in name of charitable and other companies.

26. (*1*) Where it is proved to the satisfaction of the Local Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

[Sec. 20.]

(*2*) A license by the Local Government under this section may be granted on such conditions and

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(*a*) *Peel's case*, 2 Ch. 674; *Oakes* v. *Turquand*, L. R. 2 H. L. 325; *Princess of Reuss* v. *Bos*, L. R. 5. H. L. 176, 193; *Salomon* v. *Salomon & Co.* 1897, A. C. 22; *Moosa Goolam Ariff* v. *Ebrahim Goolam Ariff*, L. R. 39 I. A. 237. Cf. *British Association of Glass Bottle Manufacturers, Ltd.* v. *Nettleford*, 27 T. L. R. 527, as to the section only dealing with ministerial acts.

subject to such regulations as the Local Government thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Local Government so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(4) A license under this section may at any time be revoked by the Local Government, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a license is so revoked, the Local Government shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

An association licensed under this section which may desire to alter its memorandum by extending its objects, should obtain the sanction of the Local Government before applying to the Court for the sanction required by sec. 12(a).

Companies limited by Guarantee.

Provision as to companies limited by guarantee

[Sec. 21.]

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(a) *St. Hilda's College*, (1901) 1 Ch. 556.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

This section in no way affects companies registered before the Act comes into force.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

28. (*1*) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company. **Nature of shares.** [Sec. 22.]

(*2*) Each share in a company having a share capital shall be distinguished by its appropriate number.

The right to transfer is conferred by the Statute ; the articles of association state the mode of transfer and the restrictions upon it. The articles of association may place restrictions on the rght of transfer(*a*), and in the case of a private company they must do so(*b*), but where they impose no

(*a*) *Cawley & Co.* 42 Ch. D. 209 ; *Stockton Malleable Iron Co.* 2 Ch. D. 101.

(*b*) Sec. 2 (13) (*a*).

restriction a shareholder may transfer his shares, even to a pauper, in order to escape liability upon them(*a*). Hence it follows that the directors have no discretionary power, independently of any powers expressly given to them by the articles of associaton, to refuse to register a transfer which has been *bonâ fide* made(*b*), but in cases where their consent to a transfer is necessary under the articles of association, the Court will not interfere if they have acted *bonâ fide* in refusing their consent(*c*).

In order to complete a transfer it must be registered(*d*), but there is no implied agreement on the part of the seller on a sale of share that he will procure registration. It is enough for him to deliver a duly executed transfer, in the proper form required by the articles, together with the share-certificate(*e*), and until registration he will be trustee for his buyer(*f*).

If the seller executes the transfer in blank he must do nothing to delay registration, and if he does, he will be liable in damages for breach of his obligation(*g*). Where a deposit of shares with a blank transfer is made by way of mortgage, the mortgagee will be entitled to sell the shares after giving reasonable notice(*h*).

When a forged transfer is registered the company may be liable in damages, if it issues a certificate to the transferee and he or a *bonâ fide* purchaser from him has acted upon it(*i*).

(*a*) *Discoverers Finance Corp. Lindlar's case*, (1910) 1 Ch. 312, overruling *Discoverers Finance Corp* (1908) 1 Ch. 141.

(*b*) *Weston's case*, 4 Ch. 20.

(*c*) *E. p. Penny*, 8 Ch. 446; *Coalport China Co.* (1895) 2 Ch. 494, *Muir Mills Co.* v. *Condon*, I. L R. 22 All. 410: *Kaikhosro Muncherji Heeramaneeck* v. *Coorla S. & W. Co* I. L. R. 16 Bom. 80; *New Great Eastern S. & W. Co.* I. L. R. 23 Bom. 685; *Bombay Fire Insce. Co* I. L. R. 16 Bom. 398.

(*d*) *Société Générale de Paris* v. *Walker*, 11 A. C. 28; *Shropshire Union* v. *The Queen*, L. R. 7 H. L. 496; *Powell* v. *Lond. and Prov. Bank*, (1893) 2 Ch. 555.

(*e*) *Skinner* v. *City of London, etc. Co.* 14 Q. B. D. 882; *London Founders' Assce.* v. *Clarke*, 20 Q. B. D. 576; *Imperial Banking and Trading Co.* v. *Pranjivandas Harjivandas*, 2 Bom. H. C. O. C. J. 258; *Parbhudas Pranjivandas* v. *Ramlal*, 3 B. H. C. R. 69.

(*f*) *Loring* v. *Davis*, 32 Ch. D. 625; *Hardoon* v. *Belilios*, 1901, A. C. 118.

(*g*) *Hooper* v. *Herts*, (1906) 1 Ch. 549

(*h*) *Stubbs* v. *Slater*, (1910) 1 Ch. 632.

(*i*) *Bahia and San Francisco Ry. Co* L. R. 3 Q. B. 584, 595; *Tomkinson* v. *Balkis Co.* 1893, A. C. 396: *Bloomenthal* v. *Ford*, 1897, A. C. 156.

The true owner is entitled to require the company to replace his name, upon its register(a). But the company will be entitled to be indemnified by the person claiming under a forged transfer to whom a certificate has been issued, even though he be acting *bonâ fide*(b).

Certificate of shares or stock.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *primâ facie* evidence of the title of the member to the shares or stock therein specified.

[Sec. 23.]

By granting the certificate the company makes a declaration to all the world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the company, and it is given by the company with the intention that it shall be so used by the person to whom it is given, and acted upon in the sale and transfer of shares(c).

A note, commonly placed at the foot of a certificate, to the effect that the certificate must be produced before any transfer is registered does not appear to be anything more than a warning to the shareholder to take care of the certificate, because he could not compel the company to register without its production, and does not amount to a representation or contract that the shares will not be transferred without its production(d). When shares, fewer in number than those comprised in one certificate are sold, there is a practice under which the seller sends his certificate to the company, of which the officer marks the transfer with the words "Certificate lodged." This practce is known as "certification," and on delivery of such certificated transfer the buyer pays. Such certification does not warrant the title of the transferor. nor the validity in point of law of the various

(a) *Davis* v. *Bank of England*, 2 Bing, 393; *Sloman* v. *Bank of England*, 14 Sim. 475; *Barton* v *L. & N. W. Ry. Co.* 38 Ch. D. 149, *Bahia and San Francisco Ry. Co.* q. v. s.

(b) *Corporation of Sheffield* v. *Barclay*, 1905, A C. 392.

(c) *Bahia and San Francisco Ry. Co.* L. R. 3 Q. B. 584, 595. As regards a minor being a member. See *Fazulbhoy Jaffer* v. *Credit Bank*, I. L. R. 39 Bom. 331.

(d) *Rainford* v *James Keith & Co.* (1905) 1 Ch 296; appeal allowed, but not on this point, in (1905) 2 Ch. 147.

documents which establish the title(*a*). Where a transfer of fully paid shares is certificated without any qualification, the company may be estopped from denying that they are fully paid(*b*), but according to a judgment of the House of Lords, the secretary, by certifying transfers gives a receipt or acknowledgment, and if in fact the certificate has not been lodged, the company is not estopped from setting up the true facts(*c*).

Definition of "member."

[Sec. 24.]

30. (*1*) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(*2*) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

This section defines members of a company, who are (1) subscribers of the memorandum of association ,(2) persons who agree to become members and whose names are registered. The former class are members *ab initio* (*vide* sec. 23(2)), in the case of the latter class agreement *plus* registration must be shown, a distiction which is clearly expressed in *Nicol's case*. By subscribing the memorandum the subscriber agrees to take the number of shares set against his name(*d*), the fact of non-registration of his name does not relieve him of liability(*e*), but he will not continue liable if all the shares are allotted to other persons(*f*). As regards non-subscribers of the memorandum the agreement may be shown in various ways. In the case of directors, where they

(*a*) *Bishop* v. *Balkis Consolidated Co.* 25 Q. B. D. 512.

(*b*) *Concessions Trust*, (1896) 2 Ch 757.

(*c*) *George Whitechurch Ltd* v. *Cavanagh*, 1902, A. C. 117.

(*d*) *Drummond's case*, 7 Ch 780 ; followed in *The Bombay Electrical Co* I. L. R. 13 Bom. 57 ; *The Machine Exchange Co.* I. L. R. 12 Bom. 311 ; *Tyddyn Sheffrey Slate Quarries Co.* 20 L T. 105.

(*e*) *Evan's case*, 2 Ch. 427 ; followed in *The Bombay Electrical Co.* (*q. v. s.*) ; *London Coal Co.* 5 Ch. D 525

(*f*) *Mackley's case*, 1 Ch. D. 247 ; *Kipling* v. *Todd*, 3 C. P D. 350.

are required by the articles of association to hold a certain number of shares to qualify them for their office, secs. 84, 85 of the Act should preclude such questions arising as not infrequently occur in the case of other persons. The principles of the law of contract as regards proposal and acceptance before an agreement can be concluded apply(*a*), and an allotment of shares on an application by one of the public must be communicated to the applicant(*b*). There may be such an agreement to take shares where a person signs a duplicate of the memorandum of association after registration(*c*). Mere agreement to take shares is not of itself sufficient, for under the section the placing of the name of a shareholder on the register is a condition precedent to membership(*d*). The articles of association of an insurance company limited by guarantee provided that the company should consist of the several persons who for the time being should have insured or should have agreed to insure in the company; that every person who insured with the company should as from the date of such insurance be deemed to have been a member of the company, and every such person should be deemed to have ceased to be a member so soon as he should be no longer insured in the company; that each member for the time being of the directors should "*ex officio* be a member of the company;" that the first directors should be the subscribers of the memorandum, but that directors should not "necessarily be members other than *ex officio* members." It was held that under the articles directors were not liable as such to contribute as members to the assets of the company upon a winding up(*e*). When shares are applied for subject to a condition, the applicant will not be a member of the company should the condition precedent not be fulfilled, even though shares have been allotted to him and his name has been placed on the register(*f*).

(*a*) *Nicol's case*, 29 Ch. D. 421.

(*b*) *Pellatt's case*, 2 Ch. 527; cf. *The Imperial Flour Mills Co.* v. *Lamb*, I. L. R. 12 Bom. 647; *Anandji Visram* v *The Nariad, etc. Co.* I. L. R. 1 Bom 320; *Ajodhia Persad* v. *Off. Liq. Cotton Ginning Co.* 7 A. W. N. 57.

(*c*) *Guzerat, etc. Co.* v. *Girdharlal Dalpatram*, I. L. R. 5 Bom. 425; *Imperial Ice Manfg Co* v. *Wadia*, I. L. R. 13 Bom. 415; *Bombay Nat. Manfg. Co.* v. *Khalifa*, I. L. R. 14 Bom. 106

(*d*) *Nicol's case*, (q. v. s.) at p. 447.

(*e*) *Premier Underwriting Assocn.* (*No.* 2), (1913) 2 Ch. 81.

(*f*) *Mahendra Gopal Mukerji* v. *Lachman Prasad*, I. L. R. 35 All. 538.

Register of members.

31. (*1*) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

[Sec. 25.]

(i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(ii) the date at which each person was entered in the register as a member;

(iii) the date at which any person ceased to be a member.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Annual list of members and summary

32. (*1*) Every company having a share capital shall once at least in every year make a list of all persons who on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

[Sec. 26.]

(*2*) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the

return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) the amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) the number of shares taken from the commencement of the company up to the date of the return;

(*c*) the amount called up on each share;

(*d*) the total amount of calls received;

(*e*) the total amount of calls unpaid;

(*f*) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return;

(*g*) the total number of shares forfeited;

(*h*) the total amount of shares or stock for which share-warrants are outstanding at the date of the return;

(*i*) the total amount of share-warrants issued and surrendered respectively since the date of the last return;

(*k*) the number of shares or amount of stock comprised in each share-warrant;

(*l*) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company; and

(*m*) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(*3*) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

(*4*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Under the corresponding section of the English Statute (sec. 26(3)) the summary must also include a statement in the form of a balance-sheet. The Indian Act contains an analogous provision in section 134, after expressly providing for the preparation of a balance-sheet (sections 131, 132), and requires that copies of the balance-sheet and of the auditor's report thereon are to be forwarded to the registrar at the same time as the list of members and summary prepared under this section. It is no defence to a charge under this section (sub-sec. (4)) that no general meeting has been held if the party charged was in default in holding the meeting(*a*).

Trusts not to be entered on register.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

[Sec. 27.]

(*a*) *Park* v. *Lawton*, (1911) 1 K. B 588.

The object of this section is,(1) to relieve the company from taking notice of equitable interests in shares, and,(2) to preclude persons claiming under equitable title from converting the company into a trustee for them(*a*).

Notice to the company of an equitable mortgage by deposit of share certificates is not notice of a trust, but an intimation to the company of the pledge of the shareholder's beneficial interest(*b*).

The rule in *Dearle* v. *Hall* (*c*) under which priority of notice gives priority of charge, does not apply to a mortgagee of shares, as notice to the company will not, as between equitable mortgagees, give priority(*d*). The Court will not allow a memorandum of lien to be entered on the register by the company(*e*).

It is to be observed that the position of an executor is distinguished from that of a trustee(*f*).

Registration of transfer at request of transferor.

[Sec. 28.]

34. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

The form of transfer is regulated by the company's articles of association. Clause 19 of Table *A* gives a form, which the form required by most companies' articles generally resembles. The directors may waive any irregularity(*g*), and when the articles require that "every transfer must be in writing and in the usual common form," the directors may not refuse to register a transfer because it omits particulars which would be found in a common form but are in the circumstances immaterial(*h*). Directors are justified in refusing

(*a*) Buckley 9th. Edn. p. 75.
(*b*) *Bradford Banking Co.* v. *Briggs*, 12 A. C. 29.
(*c*) 3 Russ. 1.
(*d*) *Société Générale de Paris* v. *Walker*, 11 A. C. 20, 30.
(*e*) *Key & Son, Ltd.* (1902) 1 Ch. 467
(*f*) Secs. 35, 160 ; and *Glasgow Bank Buchan's case*, 4 A. C. 549, 588, 594.
(*g*) *Marino's case*, 2 Ch. 596.
(*h*) *Letherby & Christopher Ltd.* (1904) 1 Ch. 815.

to register a transfer not duly stamped, and in order to determine whether the transfer is duly stamped they are entitled to go behind the consideration stated on the face of the document(*a*). A company is not bound to enter the name of a firm on the register, as a firm is not a "person"(*b*).

Transfer by legal representative.

35. [Sec. 29.] A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

This section follows upon the general rule of law that the executor or administrator of a deceased person is his legal representative for all purposes(*c*).

Inspection of register of members.

36. (*1*) [Sec. 30.] The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member *gratis*, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.

(*2*) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every

(*a*) *Maynard* v. *Consolidated Kent Collieries Corp.* (1903) 2 K. B. 121.
(*b*) *Vagliano Anthracite Collieries*, 1910, W. N. 187.
(*c*) Indian Succession Act, 1865, sec. 179: Probate and Administration Act, 1881, sec. 4.

hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

The section gives an absolute right to inspection and to copies of the register, which may be exercised through a solicitor or agent(*a*). The applicant for inspection need not assign any reason, and the fact that he is actuated by hostile motives is immaterial(*b*). Even a temporary refusal to grant inspection, based upon grounds of inconvenience to the company's business, will render a director liable(*c*). When the company has gone into liquidation this section no longer applies(*d*). The right to inspect does not confer the right to take extracts from, or to make copies of the entries in the register, because the person who inspects can obtain such copies as he requires by paying for them(*e*).

Power to close register.

37. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

[Sec. 31.]

Power of court to rectify register.

38. (*1*) If—

[Sec. 32.]

(*a*) the name of any person is fraudulently or without

(*a*) *Bevan* v. *Webb*, (1901) 2 Ch 59.

(*b*) *Reg.* v. *Wilts Navigation*, 29 L. T. 922 ; *Holland* v. *Dickson*, 37 Ch. D. 669 ; *Davies* v. *Gas Light Co.* (1909) 1 Ch. 248 ; *Mutter* v. *Eastern Ry.* 38 Ch. D. 92.

(*c*) *Queen-Empress* v. *Beer*, I. L. R. 20 All. 126.

(*d*) *Kent Coalfields Synd.* (1898) 1 Q. B. 754.

(*e*) *Balaghat Gold Mining Co.* (1901) 2 K. B. 665.

sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908, on the grounds mentioned in section 100 of that Code.

The court may act under this section both before and after a winding up(a). The Court may also rectify the

(a) *Oakes* v. *Turquand*, L. R. 2 H. L. 325; *Sussex Brick Co.* (1904) 1 Ch. 598.

register in a suit against the company(*a*). Where the application is based solely upon the grounds stated in sub-sec.(1) (b), *i e*, default or unnecessary delay, the transfer should be otherwise free from objection. The meaning of sufficient cause has been considered in many cases, turning upon the facts in each(*b*), also in cases where the applicant alleged that he had been induced to take shares by misrepresentation(*c*). A contract to take shares induced by fraud or misrepresentation is voidable, but not void, and a shareholder cannot obtain relief upon such ground after the company has gone into liquidation(*d*). The mere fact that a prospectus on the faith of which shares were taken, did not contain some of the facts or contracts required to be stated by sec. 93 is not sufficient ground(*e*). Where the misrepresentation is alleged to consist in the omission to disclose a certain fact in the prospectus, the applicant must show that if disclosed it would falsify some fact in the prospectus(*f*). Where a company issues a prospectus containing statements of fact based upon the *bonâ fide* report of an expert, the accuracy of those statements is *primâ facie* the basis of the contract, unless the company clearly and unambiguously dissociates itself from the report so as to warn intending applicants that it does not vouch for the accuracy of the report or of statements based thereon. Otherwise if the report proves to be inaccurate, any material inaccuracy in the company's statements, will be a ground for rescission(*g*). When the company is in liquidation an application may be made under this section with the leave of the Court obtained under sec. 171(*h*).

The power given to the Court is discretionary(*i*) "in this sense that the Court properly can only exercise it if

(*a*) *Reese River Silver Mining Co* v. *Smith*, L. R. 4 H. L. 64

(*b*) *Stewart's case*, 1 Ch 574 ; *Stanton Iron Co.* 16 Eq. 559 ; *New Zealand Kapanga Co* 18 Eq 17 ; *Bahia etc Co* L. R. 3 Q. B. 584 ; *e. p. Shaw*, 2 Q B D 463 , *Portuguese Consol, etc Mines*, 42 Ch. D. 160 , *Consort etc. Co* (1897) 1 Ch 575 ; *Bellerby* v. *Rowland etc S. S. Co.* (1902) 2 Ch. 14. *Hilo Manufacturing Co.* v. *Williamson*, 28 T. L R. 164

(*c*) *E. p Ward*, L. R. 3 Ex. 180 ; *e p. Kintrea*, 5 Ch. 95 ; *Tennent* v. *Glasgow Bank*, 4 A C. 615 ; *Lynde* v. *Anglo-Italian Hemp Co.* (1896) 1 Ch. 178 ; *Downes* v. *Ship*, L. R. 3 H L 343.

(*d*) *Oakes* v *Turquand*, L R. 2 H L. 325, 353, 375.

(*e*) *Wimbledon Olympia Ld* (1910) 1 Ch. 630.

(*f*) *Christinecville Rubber Estates*, 28 T. L. R. 38.

(*g*) *Pacaya Rubber and Produce Co. Burn's application*, (1914) 1 Ch. 542.

(*h*) *Onward Building Soc.* (1898) 2 Q B. 463.

(*i*) *Luchmee Chand* v. *Bengal Coal Co.* I. L. R. 8 Cal. 317.

satisfied of the justice of the case; and on many applications the Court has declined to exercise this power on the ground that it would not be fair to do so, or, to put it more technically, that the applicant has not established any equity to disturb the existing state of things. And in considering this, the Court has always had regard to the lapse of time and to any facts and circumstances indicating acquiescence in the existing state of things by those on whose behalf the application is made to disturb it. The applications have been generally made by official liquidators seeking to establish liability for calls, but obviously the like considerations must apply to applications by those who seek to be restored to the privilege of shareholders(*a*)." A person who claims to have been misled by false representations into taking shares in a proposed company, must therefore raise the objection at an early period(*b*). Where the questions raised can be more properly tried in another proceeding, the Court will not make an order upon an application under this section, but will give liberty to the applicant to file a suit or take such proceedings as he may be advised(*c*).

Notice to registrar of rectification of register.

[Sec. 32 (4).]

39. In the case of a company required by this Act to file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar.

Register to be evidence.

[Sec. 33.]

40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Rectification of the register can only be enforced in the manner provided by the Act, but in other proceedings the entries may be shown to be untrue(*d*).

(*a*) *Per* Kekewich, J. in *Bellerby* v. *Rowland etc. S. S. Co.* (1901) 2 Ch. 265, 273. For instances of cases where an order has been made, *see* Palmer's Company Precedents, 11th Ed, pt 1, 1389.

(*b*) *Venezuela Central Ry. Co.* v *Kisch*, L. R. 2 H. L. 99; *Downes* v. *Ship*, L. R. 3 H. L. 343.

(*c*) *Ruby Consolidated Mining Co.* 43 L. J. Ch. 633.

(*d*) *Briton Med. and Gen. Life Ass. Assoc.* 39 Ch. D. 61, cf. *Reese River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 80.

41. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

[Sec. 34.]

Power for company to keep branch register in the United Kingdom.

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

42. (1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

[Sec. 35.]

Regulations as to British register.

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(*4*) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(*5*) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register.

(*6*) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British register.

The corresponding sections of the English Act provide for the keeping in a colony of a branch register of its members resident in that colony, including British India(*a*). The branch register kept under this Act is not limited to members residing in the United Kingdom, and from the omission of such limitation it may possibly be inferred that the Legislature intended that the British register should be a complete and fresh record, though sec. 42, sub-secs. (3), (4) do not wholly coincide with such an interpretation.

Section 35(2) of the English Act(*b*), however, contains a provision of importance to English companies which keep a branch register in a colony, in that the jurisdiction of rectifying the register exercisable by the High Court in England may be exercised in the colony by any competent Court, and offences under sec. 30 of the English Act may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction

(*a*) Companies (Consolidation) Act, 1908, s. 34(3).

(*b*) "It (*i.e.*, a colonial register) shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent Court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction."

43. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant. **Issue of share-warrants to bearer.**

[Sec. 37(1).]

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant. **Effect of share-warrant.**

[Sec. 37(2).]

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled. **Registration of name of bearer of share-warrant.**

[Sec. 37(3).]

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles. **Position of bearer of share-warrant.**

[Sec. 37(4).]

Entries in register when share-warrant issued.

47. (*1*) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely :—

[Sec. 37(5).]

(i) the fact of the issue of the warrant;

(ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) the date of the issue of the warrant.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

Surrender of share-warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

[Sec. 49.]

Power of company to arrange for different amounts being paid on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

[Sec. 39.]

(*1*) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ;

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Under this section the articles may be framed so as to give the company power to do such things as are specified in the sub-sections. Unless the articles provide otherwise all the shares will be entitled to participate equally in dividend, without regard to the amount paid upon each(*a*).

50. (*1*) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may— **Power of company limited by shares to alter its shares capital**

[Sec. 41.]

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient ;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares :

(*c*) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination ;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share

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(*a*) *Oakbank Oil Co.* v. *Crum,* 8 A. C. 65.

shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(*2*) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(*3*) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(*4*) If a company makes default in complying with the requirements of sub-section (*3*), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(*5*) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

"The powers given by this section are well exercised whenever the things authorised are in substance done by those who are by Statute made competent to do them(*a*)."

The power conferred by this section must be authorised by the articles, which must be altered for the purpose if they do not contain it(*b*).

(*a*) *Per* Selborne, L. C *Campbell's case*, 9 Ch. 21.

(*b*) *Imperial Hydropathic Co.* v. *Hampson*, 23 Ch. D. 1; *Boschoek Co.* v. *Fuke*, (1906) 1 Ch. 149; *Patent Invert Sugar Co.* 31 Ch. D. 166; *John Crossley & Sons*, 1892, W. N. 55; See *Moseley* v. *Koffyfontein Co.* (1911) 1 Ch. 73.

Where the directors increase the share capital by the issue of new shares they may issue preference shares, provided authority is contained in the articles of association, even though the memorandum of association itself is silent as to preference shares(*a*).

Where all the preference shares are held by one person' the word "meeting" in the memorandum and articles of association may apply to the case of a single shareholder, if the sanction of an extraordinary resolution of shareholders of that class is required to a proposed increase of capital(*b*).

51. (*1*) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or reconverted stock into shares, it shall within fifteen days of the consolidation and division, conversion or reconversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock reconverted.

[Sec. 42.]

Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as

[Sec. 43.]

Effect of conversion of shares into stock.

(*a*) *Andrews* v. *Gas Meter Co.* (1897) 1 Ch. 361.
(*b*) *East* v. *Bennett Bros.* (1911) 1 Ch. 163

to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

53. (*1*) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

[Sec. 44.]

(*2*) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Re-organization of share capital.

54. (*1*) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

[Sec. 45.]

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified copy thereof shall be filed with the registrar within twenty-one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

This section is confined to two modes of re-organizing share capital, namely, (a) by the consolidation of shares of different classes, and (b) by the division of shares into shares of different classes. Where a scheme of arrangement for which sanction was sought under section 153 did not involve any such re-organization, this section was held to be inapplicable(*a*). But this ruling was not followed in a later case, in which it was held that a scheme of arrangement which alters any rights defined by the memorandum of association must satisfy the conditions laid down by this section, although the scheme does not include the consolidation of different classes of shares or the division of shares into shares of different classes(*b*). The conflict between the two decisions last quoted has been set at rest by the Court of Appeal which overruled *In re Doecham Gloves, Ltd.*, and sanctioned a proposed arrangement under sec. 153 which did not modify the conditions contained in the memorandum and would not be an interference with any preferential right and therefore was not within this section(*c*). According to the English practice petitions under this section need not be advertised(*d*).

(*a*) *Palace Hotel Ltd.* (1912) 2 Ch. 438, followed in *In re J. A. Nordberg, Ltd* (1915) 2 Ch. 439; cf. *Vine and General Rubber Trust, Ltd.* 108 L. T. 709.

(*b*) *Doecham Gloves, Ltd.* (1913) 1 Ch. 226.

(*c*) *In re Schweppes, Ltd.* (1914) 1 Ch. 322.

(*d*) *Ashanti Development Ltd.* 1911, W. N. 100

A majority of three-fourths in value of the preference shareholders must be present or represented, as otherwise a bare majority of the class could interfere with the privileges of that class, and the resolution must be passed at a meeting at which, where the articles allow voting by proxy, shareholders may be represented by proxy(*a*).

Reduction of Share Capital.

Reduction of share capital.

[Sec. 46.]

55. (*1*) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

(*2*) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets: or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(*a*) *Foucar & Co.* 1913, W. N. 83.

(3) A special resolution under this section is in this Act called a resolution for reducing share capital.

The decision of the House of Lords in *Trevor* v. *Whitworth*(a), that a purchase by a company of its own shares is *ultra vires* and in contravention of the Statute, is given effect to by the prohibition contained in sub-sec.(*1*). But a reduction of capital, made under the statutory authority, by which capital moneys are to be returned to some or one only and not to all of the shareholders, may be resolved upon, and confirmed if fair and equitable, and would not necessarily be in violation of the Act and illegal(*b*).

The power of reduction of capital is general and extends to every possible mode of reducing capital(*c*). Instances of schemes allowed are to be found in *Credit Assce. and Guarantee Corp.*(*d*), *Allsopp and Sons, Ltd.*(*e*), *Australian Estates, etc. Co.*(*f*), and *Thomas De La Rue & Co. Ltd. and Reduced*(*g*). In *Poole* v. *National Bank of China Ltd.*(*h*) it was decided by the House of Lords that in cases where creditors are not concerned, the only questions for the Court to consider are: (1) ought the Court to refuse its sanction to the reduction out of regard to the interests of the members of the public who may be induced to take shares in the Company? (2) Is the reduction fair and equitable as between the different classes of shareholders? On a petition for confirmation of a reduction of capital by cancelling paid-up capital which is lost or unrepresented by available assets, evidence that the capital is

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(*a*) 12 A. C. 409; followed in *Bhimbhai* v *Ishwardas Jugjiwandas*, I. L. R. 18 Bom. 152; cf. *Sorabji Jamestji* v. *Ishwardus Jugjiwandas*, I. L. R. 20 Bom. 654.

(*b*) *Gatling Gun Co* 43 Ch. D. 628; *British and Amer. Fin. Corp.* v. *Couper*, 1894, A. C. 399, 403; *Credit Assce. Corp.* (1902) 2 Ch. 601; *Welsbach Co.* (1904) 1 Ch. 87; see also *Rowell* v. *John Rowell & Sons Ltd.* (1912) 2 Ch. 609, which was a case of a surrender of shares, not involving any reduction of capital, and not amounting to a purchase of its own shares by the Company.

(*c*) *Phœbe Gold Co.* 1900, W. N. 182.

(*d*) (1902) 2 Ch. 601.

(*e*) 51 W. R. 644; 1903, W. N. 132 and cf. *Welsbach Co.* q. v. s.

(*f*) (1910) 1 Ch. 414.

(*g*) (1911) 2 Ch. 361.

(*h*) 1907, A. C. 229; cf. *British and Amer. Finan. Corp.* v. *Couper*, 1894, A. C. 399.

so lost or unrepresented is not necessary(*a*). In earlier cases evidence of loss of capital was required(*b*) but in the later case referred to in (*a*) Neville, J., pointed out that the words of the Act of 1908 were wider than those of the Companies Act, 1877, under which the two former cases were decided. The section of the Indian Act is identical in its terms with the corresponding section of the Act of 1908. The Court will give its sanction to a scheme which has been approved by the requisite majority, provided that it is fair, although it is not in accordance with the strict rights of the shareholders(*c*).

Application to Court for confirming order.

56. [Sec. 47.] Where a company has passed and confirmed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Addition to name of company of "and reduced."

57. [Sec. 48.] On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words " and reduced " as the last words in its name and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words " and reduced."

(*a*) *Louisiana and Southern States Real Estate and Mortgage Co.* (1909) 2 Ch. 552; *vide* Palmer's Company Precedents, 11th Ed. Pt. I, 1262, 1276, 1277 where the learned author questions the soundness of this decision.

(*b*) *Barrow Hæmatite Co.* (2) (1900) 2 Ch. 846; *Hoare & Co.* (1904) 2 Ch. 208.

(*c*) *Showell's Brewery Co.* (*Limited and Reduced*), 30 T. L. R. 428.

The use of the words "and reduced" was dispensed with in one case on the ground of their being injurious to the company(*a*); in another it was insisted upon (*b*) for one month only(*c*), but their use on the common seal was dispensed with(*d*).

58. (*1*) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

[Sec 49.]

Objections by creditors, and settlement of list of objecting creditors.

(*2*) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

The Court must proceed as laid down by the section, notwithstanding evidence that there are no creditors(*e*).

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks

[Sec. 49(3).]

Power to dispense with consent of creditor on security being given for his debt.

(*a*) *Australian Estates, etc. Co* (1910) 1 Ch 414
(*b*) *Lindner & Co.* 1911, W. N. 66
(*c*) *Oceana Development Co. Ltd.* 1912, W N 138, *Andrew Knowles & Sons, Ltd.* 1912, W. N. 300.
(*d*) *Andrew Knowles & Sons, Ltd.* q. v. s
(*e*) *Lamson Stone Co.* (1895) 2 Ch. 726.

fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

A lessor is entitled to have a sum impounded to answer future rent(a). Debenture-holders may claim to be entered on the list(b), but if they remain passive they will not be taken to have consented(c).

Order confirming reduction.

60. [Sec. 50.] The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

In a recent case it was decided that the Court has power to sanction a reduction where the company has bearer debentures and it has not been possible to settle the list of creditors in the ordinary manner. The consent of the debenture-holders was evidenced by an extraordinary resolu-

(a) *Telegraph Construction Co.* 10 Eq. 384.
(b) *Crédit Foncier of England,* 11 Eq. 356.
(c) *Patent Ventilating Co* 12 Ch. D. 254.

tion in that behalf duly passed under a majority clause in the trust-deed and binding on all the debenture-holders. It was not possible to ascertain the names of all the debenture-holders but about 87 per cent. of the total amount was represented at the meeting at which the resolution was passed unanimously. In the circumstances the resolution was held to be sufficient evidence of the consent of all the debenture-holders and an order confirming the reduction was made(*a*).

Registration of order and minute of reduction.

[Sec. 51.]

61. (*1*) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(*2*) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(*3*) Notice of the registration shall be published in such manner as the Court may direct.

(*4*) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

For form of minute and notice of registration see cases noted(*b*).

(*a*) *Hydraulic Power and Smelting Co.* (1914) 2 Ch. 187.
(*b*) *Oceana Development Co Ltd.* 1912, W. N. 121, 138; *Thomas Wolfe Son* (1907) *Ltd. and Reduced,* 1912, W. N. 286.

Minute to form part of memorandum.

62. (*1*) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

[Sec. 52.]

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

63. (*1*) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

[Sec. 53.]

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount

not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

[Sec. 54.]

Penalty on concealment of name of creditor.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

[Sec. 55.]

Publication of reasons for reduction.

In sanctioning a reduction in the case of *Truman, Hanbury, Buxton & Co., Ltd.*, the Court ordered the company to

publish a short memorandum of the reasons for the reduction, and the causes which led to it, for the information of the public(a).

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

[Sec. 56.]

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

[Sec. 57.]

67. (*1*) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(*2*) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

(a) (1910) 2 Ch. 498.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

[Sec. 58.]

Power of limited company to provide for reserve share capital on registration.

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

69. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

[Sec. 59.]

Reserve liability of limited company.

Lord Justice Buckley in his book(a) states that "under this section a limited company can (1) reserve capital uncalled on existing shares, creating reserve liability on shares on which there was previously no reserve liability; or (2) increase the reserve liability on shares some portion of whose uncalled capital was already reserved; and may no doubt

(*a*) 9th Edn. p. 151.

(3) create new capital with reserve liability." The learned author continues: "Reserve liability cannot, it is conceived, be afterwards affected by subsequent special resolution. For its creation effects an alteration in the memorandum of association, and there is no authority in the Statute to recall the alteration."

A company has no power to create any charge on that portion of its capital which, in accordance with the resolution passed under this section, can only be called up "in the event of and for the purposes of the company being wound up(*a*)." Uncalled capital may be charged if there is power in the memorandum, or if there is power in the articles and nothing to the contrary in the memorandum(*b*). But Sir Francis Palmer, referring to the judgment of the Privy Council in *Newton* v. *Debenture-holder of Anglo-Australian, etc., Co.* questions the decision in *Bartlett* v. *Mayfair Property Co.* and the distinction which the cases make between capital reserved under this section and uncalled capital(*c*).

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

70. (*1*) In a limited company the liability of the directors or of any director, may, if so provided by the memorandum, be unlimited. [Sec. 60.]

(*2*) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(*a*) *Pyle Works Co.* 44 Ch. D. 534, 586, 587; *Bartlett* v. *Mayfair Property Co.* (1898) 2 Ch. 28; *Irish Club Co.* 1906, W. N. 127.
(*b*) *Pyle Works Co.* 44 Ch. D. 534, *Newton* v. *Debenture-holders of Anglo-Australian, etc., Co.* 1895, A. C. 244.
(*c*) Palmer's Company Precedents, 11th Ed. Pt. III, 68-72.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

[Sec. 61.]

Special resolution of limited company making liability of directors unlimited.

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

72. (1) Every company shall have a registered office to which all communications and notices may be addressed.

[Sec. 62.]

Registered office of company.

(2) Notice in writing of the situation of the registered office, and of any change therein, shall be filed with the registrar who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

The place where the registered office of the company is situated is important in deciding what Court has jurisdiction under this Act(*a*) and may be material upon the question whether a Court has jurisdiction in a suit against a company. High Courts established by Royal Charter which exercise original jurisdiction have jurisdiction in suits when the defendant dwells or carries on business within the local limits of their jurisdiction(*b*). Where the question of jurisdiction is governed by the Civil Procedure Code, a corporation is deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has a subordinate office at such place(*c*). Process may be served on a company at its registered office(*d*), or, if there is none, then at the place where it carries on business(*e*).

A company which takes an office, and appears to carry on business in a place is resident there in the only sense in which a corporation can be resident(*f*). A foreign company can acquire a residence within the jurisdiction by carrying on business therein(*g*) and even by doing so temporarily

(*a*) S 3

(*b*) Letters Patent, Calcutta, Madras, Bombay, cl. 12

(*c*) Civil Procedure Code, 1908, s. 20, Expl. II.

(*d*) S. 148

(*e*) Civil Procedure Code, 1908, O XXIX, R. 2 The Bombay High Court has held that this section does not apply to companies registered under the Companies Act, but to companies authorised to sue and be sued in the name of an officer or trustee; *Hope Mills* v. *Vithaldas*, 12 Bom. L. R 730.

(*f*) *Comp. Générale Transantlantique* v. *Law & Co.* 1899, A. C. 431; cf. *Badcock* v. *Cumberland Gap Park Co* (1893) 1 Ch. 362; *Saccharin Corp.* v. *Chemische Fabrik von Heyden Actiengesellschaft*, (1911) 2 K. B. 516; *Actiesselkabet Dampskib Hercules* v. *Grand Trunk Pacific Ry. Co.* 105 L T. 695.

(*g*) *Haggin* v. *Comptoir d' Escompte de Paris*, 23 Q. B. D. 519; *Carron Iron Co.* v. *Maclaren*, 5 H. L. C. 416; *La Bourgogne*, 1899, P. 1.

at a public exhibition(*a*). The authorities came under review in a recent case before the Court of Appeal. In determining the question whether the corporation is carrying on business within the jurisdiction three matters have to be considered: "First the act relied on as showing the corporation is carrying on business in this country" must have continued for a sufficiently substantial period of time. Next, it is essential that these acts should have been done at some fixed place of business. The third essential, and one which it is always more difficult to satisfy, is that the corporation must be "here" by a person who carries on business for the corporation in this country. It is not enough to show that this corporation has an agent here; he must be an agent who does the corporation's business for the corporation in "this country (*b*)." The *Saccharin Corporation Case*(*c*) was distinguished upon the ground that in that case the agent in London had authority to enter into contracts on behalf of the defendants without submitting orders to them for their approval; whereas in the case under appeal the agents had not that authority, their duty being merely to submit the orders to the defendants, and until they had signified their approval no contract could be entered into(*b*). The meaning of the words "dwell or carry on business" in connection with corporations has been considered in cases decided under 9 & 10 Vict. c. 95, s. 60, in which these words occur(*d*).

Publication of name by a limited company.

73. Every limited company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be

[Sec. 63.]

(*a*) *Dunlop Pneumatic Tyre Co* v. *Actien Gesellschaft fur Motor, etc. Co.* (1902) 1 K. B. 342.

(*b*) *Per* Buckley L. J. in *Okura & Co Ltd.* v *Forsbacka Jerverks Aktiebolag*, (1914) 1 K. B. 715.

(*c*) (1911) 2 K. B. 516.

(*d*) *Taylor* v. *Crowland Gas Co.* 11 Ex. 6; *Corbett* v. *G. S. N. Co.* 4 H. & N. 482; *Adams* v. *G. W. R. Co.* 6 H. & N. 404; *Brown* v. *L. & N. W. R. Co.* 4 B. & S. 326.

situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place;

(*b*) shall have its name engraven in legible characters on its seal;

(*c*) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

Penalties for non-publication of name.

74. (*1*) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

[Sec. 63 (2).]

(*2*) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement, or other official

publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque, or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

The secretary(*a*) and the directors(*b*) of a company were held personally liable by reason of the omission of the word "limited" from the name of the company upon bills signed by them. Directors were also held personally liable upon bills which gave the name of the company incorrectly(*c*). In the case of orders for goods, the word "holder" means the person to whom the order is given. Under this section the chairman of a club company was held personally liable for goods which he had authorised the steward to purchase but upon the orders for which the name of the company was not mentioned(*d*). As to signing negotiable instruments on behalf of a company, see sec. 89 and notes thereunder.

Publication of authorised as well as subscribed and paid-up capital.

75. (*1*) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(*a*) *Penrose* v. *Martyn*, E. B. & E. 499.
(*b*) *Atkins* v. *Wardle*, 58 L. J. Q. B. 377.
(*c*) *Nassau Steam Press* v. *Tyler*, 70 L. T. 376; but see *Stacey & Co.* v *Wallis*, 106 L. T. 544.
(*d*) *Civil Service Co-op. Soc. Ltd.* v. *Chapman*, 30 T. L. R. 679.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

Annual general meeting.

76. (1) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding five hundred rupees.

[Sec. 64.]

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Statutory meeting of company.

77. (1) Every company limited by shares and registered after the commencement of this Act shall, within a period of six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

[Sec. 65.]

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company or, where

there are less than two directors, by the sole director and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid;

(*c*) an abstract of the receipts of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company;

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(*4*) The statutory report shall, so far as it relates to the shares allotted by the company and to the

cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(*5*) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(*6*) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (*2*) or sub-section (*5*) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(*7*) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(*8*) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(*9*) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(*10*) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(*11*) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Calling of extraordinary general meeting on requisition

78. (*1*) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

[Sec. 66.]

(*2*) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(*3*) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(*4*) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the

resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves call the meeting.

(5) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

The "one-tenth" referred to is one-tenth of that part of the issued share capital of the company upon which all calls or other sums due have been paid, and not one-tenth of the issued share capital of the company the holders of which one-tenth have paid all calls, etc., upon their shares(a).

Provisions as to meetings and votes.

79. [Sec. 67.] In default of, and subject to, any regulations in the articles,—

(i) a meeting of a company may be called by fourteen days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule;

(ii) five members may call a meeting;

(iii) any person elected by the members present at a meeting may be chairman thereof and

(iv) every member shall have one vote.

Representation of companies at meetings of other companies of which they are members.

80. [Sec. 68.] A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any

(a) *Fruit and Vegetable Growers' Association, Ltd.* v. *Kekewich*. (1912) 2 Ch. 52.

meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

A vote given by the representative of a company under a resolution passed pursuant to this section, can be properly admitted by the chairman on the evidence afforded by a copy of such resolution(a).

Extraordinary and special resolution.

81. (*1*) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

[Sec. 69.]

(*2*) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(*3*) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed,

(*a*) *Colonial Gold Reef, Ltd.* v. *Free State Rand Ltd.* (1914) 1 Ch. 382

a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

The notice of an extraordinary general meeting must disclose all facts necessary to enable a shareholder receiving it to determine in his own interest whether or not he should attend the meeting(a). Reasonable notice must therefore be given of what is proposed to be done, though notices will not be construed with excessive strictness(b), and a notice accom-

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(a) *Tiessen* v. *Henderson*, (1899) 1 Ch. 861.

(b) *Wright's Case*, 12 Eq. 335 and 345n · *Henderson* v *Bank of Australasia*, 45 Ch. D. 330.

panied by another document to which it refers for the business to be taken is a good notice(*a*). Where the articles require that the general nature of the business of the meeting shall be specified, and this is done any amendment of the proposed resolution will be in order provided it is not inconsistent with the object of the meeting as stated in the notice, and therefore irregular as beyond the power of the meeting(*b*). What is sufficient notice of the general nature of the business must be determined from the particular circumstances of each case(*c*). At the meeting to confirm a resolution as a special resolution, no amendment of the resolution can be made(*d*). A fresh notice should be given for the second meeting(*e*), unless the articles provide for the two meetings being convened by one notice(*f*). In the absence of express authority in the articles of association, the directors of a company have no power to postpone a general meeting of the company properly convened(*g*).

Notice need not be sent to legal representatives of deceased members unless they are registered(*h*). Where the articles provide that so many days' notice must be given, the day upon which notice is served, as also that of the meeting must be excluded(*i*).

The duty of the chairman of a meeting is to preserve order, conduct the proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it. If he purports to stop or adjourn the meeting at his own will, which he has no power to do, the meeting may resolve to go on with the business for which

(*a*) *Boschock Proprietary Co.* v. *Fuke*, (1906) 1 Ch. 148

(*b*) *Betts & Co.* v. *Macnaughten*, (1910) 1 Ch. 430, cf *Torbock* v. *Lord Westbury*, (1902) 2 Ch. 871.

(*c*) *Normandy* v. *Ind Coope & Co. Ld.* (1908) 1 Ch 84, which was a case of adopting new regulations; *Baillie* v. *Oriental Telephone, etc., Co.* (1915) 1 Ch. 503; *cf.* Palmer's Company Law, 9th Edn. 167, 168

(*d*) *Wall* v. *London and Northern Assets Corp.* (1898) 2 Ch. 469; cf. *Torbock* v. *Lord Westbury*, (1902) 2 Ch. 871.

(*e*) *Alexander* v. *Simpson*, 43 Ch D. 139; but see *Espuela, etc., Co.* 48 W. R. 684, as to form of notice, see *Penarth Pontoon, etc. Co. Ltd.* 1911, W. N. 240.

(*f*) *North of England S. S. Co.* (1905) 2 Ch. 15.

(*g*) *Smith* v. *Paringa Mines*, (1906) 2 Ch. 193.

(*h*) *Allen* v. *Gold Reefs*, (1900) 1 Ch. 656; cf. *Tricumdas Mills Co.* v. *Haji Saboo Sidick*, 4 Bom. L. R. 215.

(*i*) *Railway Sleepers Supply Co.* 29 Ch. D. 204; cf. *Goldsmiths' Co.* v. *West Met. Ry.* (1904) 1 K. B. 1. *The Pavilion, Newcastle upon Tyne, Ltd. and Reduced*, 1911, W. N. 235.

it has been convened, and appoint another chairman for that object(*a*). The chairman's decisions as entered in the minute-book are *primâ facie* correct and the onus of displacing, that evidence is thrown on those who impeach the entry(*b*). After a reasonable hearing has been given to a minority it is competent to the chairman, with the sanction of a vote of the meeting, to declare the discussion closed and put the question to the vote(*c*). The effect of the provision in sub-section(*3*) is that the Court will not go behind the declaration of the chairman, except in cases where fraud is proved(*d*). But the declaration will not be final if the chairman states the numbers voting each way and the numbers so declared show that the majority is not sufficient(*e*).

Voting by proxy will only be allowed when expressly provided for by the articles of association(*f*), and every proxy will require a one anna stamp(*g*). A proxy authorising a person to vote does not authorise him to demand a poll(*h*). Where the articles of association provide that "no person shall be appointed or have authority to act as a proxy who is not a shareholder in this company," it will suffice if the person appointed is qualified at the time he is called upon to act as a proxy(*i*); and when the articles go on to provide that no objection should be made to the validity of any vote except at the meeting or poll at which such vote should be tendered, and every vote not disallowed at such meeting or poll, and whether given personally or by proxy, should be deemed valid for all purposes whatsoever, it was decided that the validity of votes by A, to whom a proxy had been given and who was not a member, and, failing him to B, who was a member, could not be afterwards disputed(*j*). Sub-section (*5*) gives the effect of the judgment of Kay J. in *Chillington Iron Co.*(*k*).

(*a*) *National Dwelling Society* v *Sykes*, (1894) 3 Ch. 159.
(*b*) *Indian Zoedone Co.* 26 Ch D. 70
(*c*) *Wall* v. *London and Northern Assets Corp.* (1898) 2 Ch 469.
(*d*) *Hadleigh Castle Gold Mines*, (1900) 2 Ch. 419 . *Arnot* v. *United Lands Co.* (1901) 1 Ch. 518.
(*e*) *Caratal (New) Mines Ltd* (1902) 2 Ch. 498.
(*f*) *Harben* v. *Phillips*, 23 Ch. D. 14.
(*g*) Indian Stamp Act, 1899, Art. 52
(*h*) *Haven Gold Co.* 20 Ch. D. 151, 157.
(*i*) *Bombay Burma Trad. Corp* v. *Dorabji*, 1905 A C. 213 ; I. L. R. 29 Bom. 126.
(*j*) *Colonial Gold Reef, Ltd.* v. *Free State Rand, Ltd.* (1914) 1 Ch. 382.
(*k*) 29 Ch. D. 159 ; cf. *Liladhar Shamji* v. *Rehmubhoy Allana*, I. L. R. 15 Bom., 164.

Upon a show of hands members present by proxy cannot vote. The chairman cannot upon a show of hands ascertain how many votes a hand is intended to convey(*a*), and unless a poll is demanded the voting will go by numerical majority(*b*).

The articles usually provide that if a poll is demanded it shall be taken " in such manner and at such time and place as the chairman of the meeting directs," and where this is so, the chairman cannot direct a manner dispensing with the personal attendance of the voter or of the person appointed to be his proxy. A direction, therefore, that a vote shall be taken by means of voting papers signed by the members and delivered at the offices of the company on or before a fixed day and hour, will be invalid(*c*).

The Court will not interfere at the instance of the minority to correct mere irregularities, the acts irregularly performed not being themselves *ultra vires*(*d*). But where the company acts on resolutions inconsistent with the articles and not confirmed as special resolutions, the Court will grant an injunction restraining it from so doing(*e*), and the Court will interfere at the instance of a shareholder to restrain the company and directors from acting upon resolutions passed at a meeting of which insufficient notice was given(*f*).

Registration and copies of special and extraordinary resolutions.

82. (*1*) A copy of every special and extraordinary resolution shall, within fifteen days from the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed or typewritten and filed with the registrar who shall record the same.

[Sec. 70.]

(*a*) *Ernest* v. *Loma Gold Mines*, (1896) 2 Ch. 572 ; affirmed in (1897) 1 Ch. 1 ; also as to proxies signed in blank.

(*b*) *Horbury Bridge Co.* 11 Ch. D. 109.

(*c*) *McMillan* v. *Le Roi Mining Co* (1906) 1 Ch. 331. See *Shaw* v. *Tati Concessions Ltd.* (1913) 1 Ch. 292, follg. *Reg.* v. *Wimbledon Local Board*, 8 Q. B. D. 459, as to validity of proxies lodged between the meeting and the poll.

(*d*) *Foss* v. *Harbottle*, 2 Hare, 461 ; *MacDougall* v. *Gardiner*, 1 Ch. D. 13.

(*e*) *Quin and Axtens, Ld.* v. *Salmon*, 1909, A. C. 442 ; affirming (1909) 1 Ch. 311.

(*f*) *Baillie* v. *Oriental Telephone and Electric Co.* (1915) 1 Ch. 503.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of meetings and directors

83. (1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

[Sec. 71]

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

The minutes of meetings should not be altered subsequently, and it is irregular for the secretary of a company, either under superior directions or otherwise, to alter minutes of meetings, either by striking out anything or adding anything(a)

Directors.

83A. (1) Every company registered after the commencement of this Act shall have at least two directors. **Directors obligatory.**

(2) This section shall not apply to a private company.

83B. In default of and subject to any regulations in the articles of a company other than a private company— **Appointment of directors.**

(i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;

(ii) the directors of the company shall be appointed by the members in general meeting ; and

(iii) any casual vacancy occurring among the directors may be filled up by the directors but the person so appointed shall be subject to retirement at the same time as if he had become a director on the

(a) *Cawley & Co.* 42 Ch. D. 209. 226.

day on which the director in whose place he is appointed was last appointed a director.

The English Statute contains no sections corresponding to the two foregoing and other new sections (91A—91D) introduced by Act No. XI of 1914. Formerly, as is still the case under the English Act, a company need not have any directors(a), but every company other than a private company registered after April 1st, 1914, must have at least two. The appointment of directors is usually provided for by the articles of association, which should state who are to be the first directors. Companies which register articles, provided the latter contains such clauses as are necessary to comply with the compulsory requirement of section 83A will not be affected by section 83B the provisions of which apply "in default of and subject to any regulations in the articles." Where a company does not register articles Table A applies(b). The regulations in Table A also apply to companies which register articles in so far as the articles do not exclude or modify the regulations in Table A. As regards companies which do not register articles, and companies which do so, but without making due provision therein for the appointment of directors so that to them Table A will *pro tanto* apply, section 83B creates a difficulty, for clause 68 of Table A, which provides that the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association, cannot be reconciled with section 83B. Presumably the principle *leges posteriores priores contrarias abrogant* will be held to apply should the question ever be raised as to whether the first directors have been properly appointed. Where the provisions of a later Act are so inconsistent with or repugnant to those of an earlier Act that the two cannot stand together the earlier stands impliedly repealed by the later(c). If this rule be applied the provisions of section 83B will have to be observed in preference to the procedure prescribed by Table A, cl. 68. Where the articles provide that the number and names of the first directors shall be determined by the subscribers to the

(a) *Buluwayo Market Co.* (1907) 2 Ch 458.
(b) Sec. 18.
(c) Maxwell on the Interpretation of Statutes, 5th Ed. 253 ; *West Ham* v. *Fourth City Building Society*, (1892) 1 Q. B 654 ; *Brown* v. *G. W R.* 9 Q. B. D. 753.

memorandum of association but are silent as to the majority, all should sign the appointment(*a*) or a meeting of subscribers be called and the appointment made by a resolution of the majority(*b*).

The subscribers of the memorandum will continue to hold office until the first directors are actually appointed: they will not be affected by clause 78 of Table A providing that the whole of the directors shall retire at the first ordinary meeting of the company(*c*). Where the articles provide that the directors shall retire at the annual general meeting, but no such meeting is held, the directors will be deemed to have vacated office on the last day on which the meeting could have been held, and not to be entitled to any remuneration thereafter until re-election(*d*).

Comparing these sections further with the clauses in Table A relating to the appointment of directors it is to be observed that clauses 78 and 79 provide for the retirement of directors, clause 81 empowers the company to fill up the office of a retiring director, and clause 82 provides that if the company does not do so the meeting shall stand adjourned for a week and if the company does not then fill the vacancy the retiring director shall be deemed to have been re-elected at the adjourned meeting. Clause 84 is in practically identical terms as sub-section(*iii*). Table A therefore already fully provides in detail for the matters to which sub-sections(*ii*) and (*iii*) relate and it is not easy to appreciate the object of these sub-sections, which, as already pointed out will not in practice effect any company other than one to which Table A applies. A casual vacancy means any vacancy arising otherwise than by retirement (under cl. 78) such as a vacancy occurring upon the death, resignation, or insolvency of a director(*e*).

It is not necessary, it is submitted, that directors should be so styled. The term "director" includes any person occupying the position of a director by whatever name called(*f*): Provided the members of the company in general

(*a*) *Great Northern Salt Co.* 44 Ch. D. 472.
(*b*) *London and Southern Counties Land Co.* 31 Ch. D. 223.
(*c*) *John Morley Building Co.* v. *Barras*, (1891) 2 Ch. 386.
(*d*) *Consolidated Nickel Mines, Ltd.* (1914) 1 Ch. 883.
(*e*) *Munster* v. *Cammell, Co.* 21 Ch. D. 183.
(*f*) Sec. 2 (5).

meeting, in conformity with the articles, appoint two persons to occupy the position of directors it would seem that the terms of the sections have been complied with, and that it is immaterial what their designation may be. Usually, no doubt, they will be termed directors, but in some cases some other designation, may be preferred. Further, it is not necessary that actual individuals should be appointed. There is nothing in the Act prohibiting the appointment of a limited company as a director of another company(a), and a company, which in accordance with the former practice would have been managed by a firm as its Managing Agents, may appoint as one of its directors the private company into which such firm has turned itself under the provisions of the Act in that behalf. The directors need not, moreover, have equal powers. There is nothing to prevent the articles being so framed as to constitute one a governing director while the other is a mere dummy appointed for the sake of conformity with the statute.

In order to pass valid resolutions the directors must act together as a board. It is not sufficient to procure the separate authority of a sufficient number of directors to constitute a quorum(b), and where directors are permitted by the articles to contract or be interested in business with the company but may not vote on any such matter a quorum means a quorum competent to vote, exclusive of the interested directors(c). A board meeting can be held under informal circumstances, but the casual meeting of two directors even at the office of the company cannot be treated as a board meeting at the option of one against the will and intention of the other, and it makes no difference that a notice convening a board meeting has been sent by the one to the other if such notice has not in fact been received by the other(d). Provisions for the holding of board meetings and to regulate their procedure are usually contained in the articles of association. (*Vide* Table A cl. 87-94)

The articles may provide that where the number of directors is reduced by death or otherwise those who are left

(a) *Bulawayo Market Co* (1907) 2 Ch 458

(b) *Haycraft Gold Reduction and Mining Co* (1900) 2 Ch 230, 235; *D'Arcy v. Tamar, Kit Hill and Callington Ry Co* L R 2 Ex 158, referred to, cf. *Bhalabhai Amichand v Gopaldas Lamchandra*, 7 Bom L R. 291.

(c) *Greymouth Point Elizabeth Ry and Coal Co* (1904) 1 Ch 32, cf sec 91B

(d) *Barron v. Potter*, (1914) 1 Ch. 895

may act as continuing directors. But a distinction must be drawn between such a situation and a board insufficient in number from the first(*a*) Where the articles provided that "the directors may from time to time appoint additional directors, but so that the total number of directors shall not exceed the prescribed maximum," it was decided that the company having delegated to the board the power of appointing additional directors could not make any valid appointment of additional directors(*b*), but where, owing to differences between the directors, no board meeting could be held for the purpose of appointing an additional director, it was held that the company retained the power to appoint additional directors in general meeting(*b*).

A company cannot without a power in its articles appoint and pay a managing director. and to ratify any act of the directors to that effect the articles must first be altered by special resolution(*c*). But a managing director duly appointed by the directors must secure re-election by the company as a director or his agreement will come to an end if he fail(*d*). Where the articles of association of a company empowered the board of directors to appoint a managing director for such period as they deemed fit and to revoke the appointment, it was held that the board was not empowered to revoke appointments at will. but for good cause only, and that a managing director whose appointment had been revoked while he was still fulfilling the conditions of the agreement upon the terms of which he had been appointed, was entitled to recover damages against the company(*e*) Directors, when they have been appointed for a definite period, cannot be removed from office during such time, and to remove them the company must alter its articles if they contain no such power(*f*), but a managing director who accepts

(*a*) *Scottish Petroleum Co.* 23 Ch. D. 413; *British Empire Match Co.* 59 L. T. 291; *Sly, Spink & Co.* (1911) 2 Ch. 430. *Changa Mal* v. *The Provincial Bank, Ltd.* I. L. R. 36 All. 412 See *Sorabji Cursetji* v. *Scind and Punjab Cotton Press Co.* 8 Bom. L. R. 478, as to the courses open to sole continuing director where three directors are necessary to form a quorum.

(*b*) *Blair Open Hearth Furnace Co.* v. *Reigart*, 29 T. L R 449.

(*c*) *Boschoek Prop. Co.* v. *Fuke*, (1906) 1 Ch. 148.

(*d*) *Bluett* v. *Stutchbury, etc., Co.* 24 T. L. R 469.

(*e*) *Nelson* v. *James Nelson & Sons, Ltd.* (1913) 2 K. B. 471; (1914) 2 K. B. 770.

(*f*) *Imperial Hydropathic Co.* v. *Hampson*, 23 Ch D 1: cf *Hampton* v. *Price's Patent Candle Co.* 24 W R. 754.

a bribe or secret commission may be dismissed without notice(*a*).

The directors stand in a fiduciary position towards the company in regard to the powers conferred by the articles(*b*), though not as regards individual shareholders(*c*), and they must account to the company for any profits made by them in the course of their agency(*d*). If the directors exceed their powers, the company may ratify their acts(*e*), though the company cannot ratify an act of the directors which is not only in excess of their powers but *ultrâ vires* the company itself(*f*). Ratification will not authorise the directors to perform similar acts in future(*g*). When directors act in contravention of the articles, such articles must first be altered by special resolution before any ratification by the company of such acts can take place(*h*). But where directors are acting within their powers the views of the directors cannot be overriden by a mere majority at an ordinary meeting(*i*).

Though directors are agents of the company(*j*), they are not merely agents, but in the position of managing partners appointed to fill that post by a mutual arrangement between all the shareholders(*k*). Persons dealing with directors will be deemed to be acquainted with the instruments creating their authority(*l*). But person dealing *bonâ fide* with a managing director are entitled to assume that he has all the powers he purports to exercise, if they are powers which according to the constitution of the company a managing director can have(*m*). If the company allows persons to act

(*a*) *Boston Deep Sea Fishing, etc. Co* v *Ansell*, 39 Ch D 339

(*b*) *Punt* v *Symons*, (1903) 2 Ch 506 ; *Bath* v *Standard Land Co* (1911) 1 Ch. 618

(*c*) *Wilson* v. *Macauliffe*, I L R 18 All. 56

(*d*) *Parker* v. *McKenna*, 10 Ch. 96, 118.

(*e*) *Grant* v *United Switchback Ry. Co* 40 Ch. D 135

(*f*) *Ashbury Railway Carriage Co* v. *Riche*, L. R. 7 H L. 653

(*g*) *Irvine* v. *Union Bank of Australia*, 2 A. C 366.

(*h*) *Boschock Prop. Co* v *Fuke*, (1906) 1 Ch. 148

(*i*) *Automatic Self-Cleansing Filter Syndicate* v *Cunninghame*, (1906) 2 Ch. 34 ; *Gramophone, Ld* v. *Stanley*, (1908) 2 K. B 89 but cf *Marshall's Valve Gear Co.* v. *Manning and Co* (1909) 1 Ch 267

(*j*) *Ferguson* v. *Wilson*, 2 Ch 77.

(*k*) *Automatic Self-Cleansing Filter Syndicate* v. *Cunninghame*, (1906) 2 Ch. 34, 45.

(*l*) *Ernest* v. *Nicholls*, 6 H. L C 419, *County of Gloucester Bank* v. *Rudry Merthyr Co.* (1895) 1 Ch 629 ; *Owen and Ashworth's Claim*, (1901) 1 Ch. 115.

(*m*) *Biggerstaff* v. *Rowatt's Wharf*, (1896) 2 Ch. 93

as directors, it may be assumed by third persons that they have been validly appointed(*a*).

The rule in *Royal British Bank* v. *Turquand*(*b*) which contains the principle underlying these decisions is that persons dealing with a company need not inquire into the "indoor management" of the company, as Lord Hatherley called it. They are bound to take notice of the external position of the company and will be affected with notice of all that is contained in the memorandum and articles of association, but they will not be affected by any irregularities that may take place in the internal management(*c*).

On this principle a mortgage sealed at a directors' meeting at which there was not a proper quorum, but apparently properly executed was held binding in favour of the mortgagees who had no notice of the irregularity(*d*).

But the rule does not apply where the persons concerned must be taken to know that the external requirements have not been complied with(*e*), and where the secretary fraudulently affixed the seal of the company to a share certificate and forged the signatures of the directors, it was held that the company was not thereby estopped from disputing the claim(*f*). A company will not be bound by a fraudulent agreement entered into by directors on its behalf(*g*), though it will be liable to an action for the fraudulent misrepresentation of its agent acting in the course of its business(*h*). In a recent case before the House of Lords the cases dealing with the liability of a principal for the fraud of his agent came under review, and it was held that a principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the prin-

(*a*) *Duck* v. *Tower Galvanising Co.* (1901) 2 K B 314, *Mahony* v *East Holyford Mining Co* L. R. 7 H. L 869

(*b*) 6 E. & B. 327.

(*c*) *Mahony* v *East Holyford Mining Co* L. R. 7 H L, 869, 894; see also *Bargate* v. *Shortridge*, 5 H L. C 318; *Land Credit Co of Ireland*, 4 Ch. 469; *County Life Ass. Co.* 5 Ch 288.

(*d*) *County of Gloucester Bank* v. *Rudry, etc Co* (1895) 1 Ch 663

(*e*) *Howard* v. *Patent Ivory Co.* 38 Ch. D. 156, 170. 171.

(*f*) *Ruben* v. *Great Fingall Consolidated*, 1906, A. C. 439

(*g*) *British and Amer. Tel Co.* v. *Albion Bank*, L R. 7 Ex 119.

(*h*) *Barwick* v. *English Joint Stock, Bank* L. R. 2 Ex. 259; See Buckley on Companies, 9th Edn. p. 625; where the learned author in dealing with the question of the liability of a company for the fraudulent acts of directors points out that the cases are not all easy to reconcile

cipal or for the benefit of the agent(a) The case of *Barwick* v. *English Joint Stock Bank* was stated not to be an authority for the proposition that the principal was not liable unless the fraud of the agent was committed for the benefit of the principal and the dictum of Lord Davey in *Ruben* v *Great Fingall Consolidated* was dissented from

"Although directors are not, properly speaking, trustees, yet they have always been considered and treated as trustees of money which comes into their hands, or which is actually under their control, and ever since joint-stock companies were invented directors have been held liable to make good moneys which they have misapplied upon the same footing as if they were trustees(b)" But though directors are trustees for the shareholders, that is, the company, they "are not trustees for the creditors of the company. The creditors have certain rights against a company and its members, but they have no greater rights against the directors than they have against any other member of the company(c)"

Directors will be held liable for acts done by them which they know, or must be taken to have known, are *ultrâ vires* the company, and result in loss to the company(d) "If a director acting *ultrâ vires*, that is not only beyond his own power, but also beyond any power the company can confer on him, parts with money of the company, I fail to see on what principle the fact that he acted *bonâ fide*, and with the approval of the majority of the shareholders can avail him as a defence to an action by the company to compel him to replace the money(e)" But where directors distributed a portion of the capital among shareholders with their assent, and with notice of the fact that the money distributed was

(a) *Lloyd* v *Grace, Smith & Co* 1912 A C 716

(b) *Per* Lindley, L. J., in *Lands Allotment Co.* (1894) 1 Ch. 616.

(c) *Poole, Jackson & Whyte's case*, 9 Ch D 322; cf. *Wilson* v. *Lord Bury*, 5 Q B. D. 518 See *Ferguson*, v *Wilson*, 2 Ch 77, as to personal liability of directors for breach of contract, and *Mills* v *Northern Rail of Buenos Ayres Co.* 5 Ch. 621, as to a creditor obtaining an injunction against a company for *ultrâ vires* acts

(d) *Marzetti's case*, 28 W. R 541: and *per* Romer, J, in *Lagunas Nitrate Co* v *Lagunas Nitrate Syn* (1899) 2 Ch 392 at p. 418.

(e) *Per* Lindley, L. J., in *Cullerne* v. *London, etc Soc.* 25 Q. B D 485, cf *London Finan. Assoc* v. *Kelk*, 26 Ch. D 107; cf *Kathiawar Trading Co* v *Virchand Dipchand*, I L. R. 18 Bom 119.

part of the capital, it was held that they were entitled to an indemnity from the shareholders(*a*).

But as regards their liability for negligence, "if the directors act within their powers and with such care as is reasonably to be expected from them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company which they represent, they discharge both their legal and equitable duty to the company, and will not be liable for mistakes or errors of judgment(*b*)." So long as directors act honestly they cannot be made responsible in damages unless guilty of gross negligence and not only may there be clauses in the articles relieving them from liability,(*c*) but sec. 281 expressly gives the Court power to grant relief in proceedings against a director for negligence or breach of trust, if it appears that the director has acted honestly, and ought fairly to be excused.

There is no duty cast upon the directors to lock up the company's seal and "guard is as a dangerous beast"(*d*), nor is it negligence on their part to entrust it to the secretary or some other official(*e*).

In an action for deceit against a director, actual fraud must be proved. A false statement made through carelessness and without reasonable ground for believing it to be true may be evidence of fraud but does not necessarily amount to fraud(*f*).

Directors may also be made liable for misfeasance and breach of trust. In a winding-up an application may be made under section 235, when the company is a going concern the remedy is by suit.

Directors have been held liable for bonus improperly paid to them(*g*), for the value of their qualification shares(*h*),

(*a*) *Moxham* v. *Grant*, (1900) 1 Q. B. 88

(*b*) *Lagunas Nitrate Co.* v. *Lagunas Nitrate Syn* (1899) 2 Ch. 392, *New Mashonaland Co* (1892) 3 Ch. 577, see also *Turquand* v. *Marshall*, 4 Ch. 376 · *New Fleming Spinning and Weaving Co* v. *Kessowji Naik*, I L. R. 9 Bom 373

(*c*) *Brazilian Rubber, etc., Co* (1911) 1 Ch. 425.

(*d*) *Per* Lord Macnaughten in *Ruben* v *Great Fingall Consolidated* (q. v. s.) at p. 444

(*e*) *Bank of Ireland* v *Trustees of Evans' Charities*, 5 H. L. C. 389.

(*f*) *Derry* v. *Peek*, 14 A. C., 337.

(*g*) *Rance's case*, 6 Ch. 104.

(*h*) *Carriage Co-op. Assoc.* 27 Ch. D., 322 ; *Archer's case*, (1892) 1 Ch. 332 ; *London and S. W. Canal*, (1911) 1 Ch 346 ; *Postage Stamp, etc., Co.* (1892) 3 Ch. 566 ; *Englefield Co.*, 8 Ch. D. 388

for illegitimate(*a*) and secret(*b*) profits, for selling their own property to the company(*c*). It is misfeasance for a director to qualify by taking shares in trust for the promoter to whom he gives blank transfers. In such a case the measure of damages is the highest value of the shares during the director's holding(*d*).

An innocent director will not be liable for the fraud of his co-directors if the books and accounts of the company have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud(*e*), since a director cannot be held liable for being defrauded(*f*) It would appear that moral obliquity is essential in such cases(*g*) and directors are not called upon to distrust and be on their guard against the possibility of fraud being committed by their subordinates of every degree(*h*) Section 282 provides a penalty for wilfully making false statements in a balance sheet report, certificate or other documents, and directors may also be held liable under the Indian Penal Code(*i*).

In this connection the attendance or non-attendance of directors at board meeting becomes important and a director is not liable for misfeasances committed by co-directors without his knowledge at board meetings at which he was not present(*j*). Where a director received copies of reports and circulars, which justified him in believing that the affairs of the company were being conducted in conformity with the rules, but he did not attend board meetings, it was held he was not liable; for the omission to attend meetings was not the same thing as neglect or omission of the duties which ought to have been performed at those meetings(*k*) A director is not necessarily affected with constructive notice, in the absence of actual knowledge, of the facts which appear in the books of the company(*l*)

(*a*) *Parker* v. *McKenna*, 10 Ch. 118
(*b*) *Boston Deep Sea Co* v *Ansell*, 39 Ch D. 339
(*c*) *Cape Breton Co* 12 A. C., 652.
(*d*) *London and S W. Canal Co* (1911) 1 Ch 348
(*e*) *Charles Denham & Co* 25 Ch D 752
(*f*) *Land Credit Co. of Ireland* v *Lord Fermoy*, 5 Ch 772; cf *Kumarpuram* v. *Pestonjee*, 5 Bom. L. R. 633
(*g*) *Vide* judgment of Lord Macnaghten in *Dovey* v *Cory*, 1901, A. C. 477
(*h*) *Dovey* v. *Cory*, q v s, followed in *Prefontaine* v *Grenier*, 1907, A C. 101.
(*i*) *Queen-Empress* v *Moss*, I. L R 16 All 88
(*j*) *Perry's case*, 34 L. T 716.
(*k*) *Marquis of Bute's case*, (1892) 2 Ch 101.
(*l*) *Coasters Ld* 103 L. T. 632.

The remuneration to be paid to directors is a matter to be provided for and regulated by the articles of association (*Vide* Art. 69 of Table *A*). If a person accepts the offers of director and acts as such, an agreement must be inferred between him and the company, on his part that he will serve the company on the terms as to qualification and otherwise contained in the articles, and on the part of the company that he shall receive the remuneration provided by the articles for the directors(*a*). Where the articles provide that the board shall be entitled to receive a fixed sum, by way of remuneration in each year, a director will not be entitled to anything for service for part of a year(*b*), and where the articles give a fixed sum for remuneration, to be divided as the directors shall decide, a decision as to division is a condition precedent to a director's right to sue for his remuneration(*c*) Where the articles provide that the directors shall be paid in each year as remuneration for their services a certain percentage on the "net profits" of the company for such year, the article will only apply to profits made by the company as a going concern, and the directors will not be entitled to profits made by a sale of the whole undertaking and assets in a voluntary winding up(*d*). In another case the articles provided that no dividends should be payable except out of "realized profits," and that no remuneration should be paid to the directors until a dividend of 7 per cent. had been paid to the shareholders The directors treated estimated profits as realized profits, which latter expression, it was held, must be taken in its ordinary commercial sense as meaning at least "profits tangible for the purposes of division," and were ordered to repay, with interest, all sums improperly paid as dividends and also the remuneration they had respectively received(*e*). But, unless otherwise stated, the remuneration is payable although no profits are made(*f*).

In the absence of a resolution of the company or a provision in the articles, directors are not entitled to be paid out of the assets of the company their travelling expenses incurred

(*a*) *Isaac's case*, (1892) 2 Ch 158.

(*b*) *Salton* v *New Beston Cycle Co.* (1899) 1 Ch. 775.

(*c*) *Morrell* v. *The Oxford Portland Cement Co.* 26 T. L. R. 682.

(*d*) *Frames* v. *Bultfontein Mining Co* (1891) 1 Ch. 140; cf. *Spanish Prospecting Co* (1911) 1 Ch. 93 in which the meaning of the word "profits" was explained at length; *Johnston* v. *Chestergate Hat Mantg Co.* (1915) 2 Ch 338

(*e*) *Oxford Benefit Building and Investment Society*, 35 Ch. D. 502.

(*f*) *Lewis' case*, 26 L. T. 673; cf. *Nell* v. *Atlanta Gold, etc. Mines*, 11 T. L. R. 407.

in attending board meetings(*a*), for directors have no right to be paid for their services, and cannot pay themselves or make presents to themselves out of the company's assets unless authorised so to do by the instrument which regulates the company or by the shareholders at a properly convened meeting(*b*). Where the articles provide that the office of a director shall be vacated if he become insolvent it is not necessary that there should be a definite act of insolvency on a definite day from which it could be said that the insolvency dated(*c*)

Restrictions on appointment or advertisement of director

84. (*1*) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus as the case may be, he has, by himself or by his agent authorised in writing—

[Sec. 72.]

(*i*) signed and filed with the registrar a consent in writing to act as such director and

(*ii*) save in the case of a company limited by guarantee and not having a share capital either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(*2*) On the application for registration of the memorandum and articles of a company the applicant shall file with the registrar a list of the persons

(*a*) *Young* v. *Naval, Military, and Civil Service Co-operative Soc. of S. Africa* (1905) 1 K. B. 687.

(*b*) *George Newman & Co* (1895) 1 Ch. 674, 686.

(*c*) *London and Counties Assets Co. Ltd.* v. *Brighton Grand Concert Hall etc. Ltd.* (1915) 2 K. B. 493.

who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

For forms of consent and list of persons consenting to act as directors, see Schedule to the Indian Companies Rules, 1914, Forms II, III

This and the next section have for their object to fix the directors with their qualification shares. The words "issued by or on behalf of the company," and "contract in writing to take from the company" go to show that the corresponding section of the English Act does not apply to a prospectus issued by a promoter before the company is incorporated(*a*) But the Indian Legislature has introduced the words "or in relation to any intended company" the effect of which, no doubt, will be to make the section applicable to prospectuses issued before as well as after incorporation, whether by a promoter or by the directors The provision that the office of director shall be vacated in the circumstances stated in sec. 85, does not apply to the case of an actual director where a company by special resolution raises the share qualification(*b*).

A director may be qualified by a joint holding(*c*), beneficial ownership is not necessary for a qualification, notwithstanding that the articles say he shall hold them ' in his own right(*d*)," which means "holding in his own right as distinguished from holding in the right of somebody else. It means that a person shall hold shares in such a way that the company can safely deal with him in respect of his shares

(*a*) Buckley on Companies, 9th Ed 168.

(*b*) *Molineaux* v *London, etc. Insce. Co* (1902) 2 K B 589.

(*c*) *Grundy* v *Briggs*, (1910) 1 Ch. 444 ; *Glory Paper Mills Co.* (1894) 3 Ch. 473.

(*d*) *Pulbrook* v. *Richmond Co.* 9 Ch. D. 610, *Cooper* v *Griffin*, (1892) 1 Q. B. 740 ; *Howard* v. *Sadler*, (1893) 1 Q B. 1.

whatever his interest may be in the shares(*a*)." This principle will not apply if the company has notice that the director is only entitled to the shares as liquidator(*b*), or that they are claimed by the director's trustee in bankruptcy(*c*).

A director cannot accept his qualification shares as a gift from vendors, and will be liable as a contributory in respect of such shares(*d*).

Qualification of director

85. (*1*) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

[Sec. 73.]

(*2*) The office of director of a company shall be vacated if the director does not, within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification

(*3*) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director

(*a*) *Per* Lindley, L J. in *Bainbridge* v. *Smith*, 41 Ch D. 462, 474.
(*b*) *Boschoek Prop. Co.* v. *Fuke*, (1906) 1 Ch. 148
(*c*) *Sutton* v *English and Colonial Produce Co.* (1902) 2 Ch. 502.
(*d*) *Hay's case*, 10 Ch. 604 ; *Pearson's case*, 5 Ch. D 336 ; *London and S W. Canal Co.* (1911) 1 Ch. 346.

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

[Sec. 74.]

Validity of acts of directors.

The proviso contained in the latter half of the section is not contained in the English Statute, and gives effect to the rulings thereunder that the absence of notice of the defect does not give validity to acts done after the defect in the appointment has been discovered(*a*). The common practice is to insert a clause in the articles of association corresponding to this section, and the object of such an article and of the section is to make the honest acts of *de facto* directors as good as the honest acts of *de jure* directors. Questions as to the applicability of the section have been raised in cases relating to calls on shares made by directors who had been irregularly appointed(*b*).

87. (*1*) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors, and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

[Sec. 75.]

List of directors to be sent to registrar.

(*2*) If default is made in complying with this section, the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty.

(*a*) *Bridport Old Brewery Co.* 2 Ch. 191; *Harben* v. *Phillips*, 23 Ch. D. 14, 27, 34; *Tyne Mutual* v. *Brown*, 74 L. T. 283.

(*b*) *Dawson* v. *African Consol Co.* (1898) 1 Ch. 6; *British Asbestos Co.* v. *Boyd*, (1903) 2 Ch. 439; *Briton Medical Co.* v. *Jones*, 61 L. T. 384.

Contracts.

Form of contracts. [Sec. 76.]

88. (*1*) Contracts on behalf of a company may be made as follows (that is to say):—

(i) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(ii) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(*2*) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives as the case may be.

This and the sections immediately following do not empower a company to enter into contracts. Such contractual powers as the company possesses are to be ascertained from the memorandum and articles of association. These sections provide for the form and execution of contracts and negotiable instruments, but they do not in any way purport to express who are persons acting under the authority of the company(*a*), express or implied (sub-sec. (*1*) (ii)).

(*a*) As to who is a duly authorised person, see *Beer* v. *London and Paris Hotel Co.* 20 Eq. 412; *Browning* v. *Great Central Mining Co.* 5 H. & N. 856; *Royal Bank of India's case,* 4 Ch. 252; *Land Credit Co.* 4 Ch. 460; *Chapman* v. *Smethurst,* (1909) 1 K. B. 927

It is to be observed that the sub-section relating to the use of the company's seal, which had its origin in section 37 of the Companies Act, 1867, and was reproduced in section 67 (b) of the Indian Companies Act, 1882, has been discarded, notwithstanding its retention in the Companies (Consolidation) Act, 1908. Originally, under English law, contracts by corporations were required to be under seal. But to this rule, in process of time, exceptions were introduced, applying to all contracts by trading corporations entered into for the purpose for which they are incorporated. A company can carry on business by agents, managers and others; and if the contracts made by these persons are contracts which relate to objects and purposes of the company, and are not inconsistent with the rules and regulations which govern their acts, they are valid and binding upon the company, though not under seal(*a*). Any one dealing with the company should see that the company's articles of association have been complied with (*b*) though he is not bound, according to the rule in *Royal British Bank* v. *Turquand*, to do more than see that the proposed dealing is not inconsistent with the Act and registered documents(*c*).

Bills of exchange and promissory notes.

[Sec. 77.]

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

The person signing the instrument should be careful not to sign so as to incur personal liability. The question whether the promise to pay is the personal promise of the person signing, or is the promise of the company, depends upon the intention of the parties, which intention must be gathered

(*a*) *South of Ireland Colliery Co.* v. *Waddle*, L. R. 3 C. P. 463, 469.

(*b*) *Eagle Co.* 4 K. & J. 549; *Agar* v. *Athenæum Soc.* 3 C. B. N. S. 725.

(*c*) 6 E. & B. 327; See also *Charnock Coll. Co.* v. *Bholanath Dhar*, I. L. R. 39 Cal. 810.

from the terms of the document alone(*a*). The effect of the decisions is that the director, or secretary as the case may be, must expressly state that he is signing "for" or "on behalf of" "the X Co. Ld." or indicate by unambiguous language that he signs as agent for the Company. Though the note may run, "we, directors of the X Co. Ld., promise, etc.," and the word "director" or "secretary" be added after the signature, the makers or maker of the note will be personally liable in the absence of words making it clear that the person signed only as agent and incurred no personal liability.

Execution of deeds abroad.

90. [Sec. 78.] A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

91. [Sec. 79.] (*1*) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British India, an official seal, which shall be a *fac simile* of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(*2*) A company having such an official seal may by writing under its common seal, authorise any

(*a*) *Chapman* v. *Smethurst*, (1909) 1 K. B. 73; reversed on appeal (1909) 1 K. B, 927; *Alexander* v. *Sizer*, L. R. 4 Ex. 102; *Lindus* v. *Melrose*, 2 H. & N. 293; *Dutton* v. *Marsh*, L. R. 6 Q. B. 361, followed in *Landes* v. *Marcus & Davids*, 25 T. L. R. 478 and in *New Fleming Spinning and Weaving Co.* I. L. R. 3 Bom. 439, affirmed, I. L. R. 4 Bom. 275; cf. sec. 74 (2).

person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Disclosure of interest by director.

91A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement:

Provided that a general notice that a director is a member of any specified firm or company, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section, and after such

general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to fine not exceeding one thousand rupees.

Prohibition of voting by interested director.

91B. (1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested, and if he does so vote his vote shall not be counted:

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

Disclosure to members in case of contract appointing a manager.

91C. (1) Where a company enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand

rupees; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

The preceding sections are designed to secure that the interest of directors in contracts shall be disclosed to the other directors, and, in the case of contracts appointing a manager of the company, or any variation of such contracts, to the shareholders, and that, subject to the exception contained in section 91B they shall not vote as directors upon such matters. These sections do not, it is submitted, abrogate the ordinary rule that unless permitted by the articles so to do, a director may not contract with the company(*a*), a rule based upon the broad principle that a man cannot be allowed to put himself into a position in which his duty and interest will be in conflict(*b*), and for which there exists the further reason that the company have a right to the entire services of their directors and to the voice and advice of every director in giving his opinion upon matters which are brought before the board for consideration(*c*). Where the articles do not permit a director to contract with the company, as in the case of Table A, these sections will not, it is conceived, relieve the director from his liability to account to the company for any profits he may have made unless the company ratify the contract(*d*). But in the latter event the notice to the shareholders should state the director's interest(*e*). Should however a director, notwithstanding the absence of any permission in the articles, enter into any contract with the company, these provisions will apply equally as if the articles did so permit, and he will be liable to the penalties imposed by the sections for a breach of any of their provisions.

But the company may stipulate that they do not desire to avail themselves of the benefit of the general rule, and the insertion of a clause in the articles permitting a director to contract with the company is quite usual. Such a clause

(*a*) *Albion Steel & Wire Co.* v. *Martin*, 1 Ch. D. 580; *Republic of Bolivia Exploration Syndicate, Ltd.* (1914) 1 Ch. 139.

(*b*) *Parker* v. *McKenna*, 10 Ch. 96, 118; *Bray* v. *Ford*, 1896, A. C. 51.

(*c*) *Imperial Mercantile Credit Assoc.* v. *Coleman*, 6 Ch. 558, 567.

(*d*) *Grant* v. *U. K. Switchback Ry. Co.* 40 Ch. D. 135.

(*e*) *Kaye* v. *Croydon Tram. Co.* (1898) 1 Ch. 358; *Tiessen* v. *Henderson*, (1899) 1 Ch. 861; *Normandy* v. *Ind Coope & Co.* (1908) 1 Ch. 84; *Baillie* v. *Oriental Telephone, etc., Co.* (1915) 1 Ch. 503.

generally contains provisions, except as regards the penalty, similar to those of sections 91A and 91B(*a*), which though part of the Act. and therefore applicable to all companies alike will not, in the case of companies which do not permit a director to contract with the company, come into operation until there has been a breach of the articles. The case of *Costa Rica Ry. Co.* v. *Forwood*(*b*) shows the extent to which a director may be protected by articles of this kind but at the same time emphasised the general rule. It is to be noticed that the section requires the interested director to declare the nature of his interest. The words will not be satisfied by a mere declaration than he has an interest(*c*). A director of a company who has an interest as shareholder in another company, or is in a fiduciary position towards and owes a duty to another company which is proposing to enter into engagements with the company of which he is a director, is within the rule. It is immaterial whether this conflicting interest belongs to him beneficially or as trustee for others. In a recent case it appeared that the articles required that the director must disclose his interest in contracts by the company with the director or his firm and that a director must not vote in respect of any contract in which he is interested. A director who was interested as a shareholder in the defendant company voted in favour of a purchase of shares of another company from the defendant company. Without his vote being counted there would have been no quorum. The result was that the transaction was voidable, and as the defendant company had notice of the irregularity it was held that the plaintiff company could obtain rescission(*d*). It follows therefore that where directors are permitted by the articles to contract or be interested in business with the company, a quorum means a quorum competent to vote and transact business, exclusive of the interested director(*e*).

Though an interested director may not vote as a director the section does not prevent him from voting as a shareholder where the matter is referred to a general meeting(*f*).

(*a*) *Vide* Palmer's Company Precedents, 11th Ed. Pt 1 p. 731.
(*b*) (1900) 1 Ch. 756, (1901) 1 Ch 746, 760.
(*c*) *Imperial Assoc.* v. *Coleman*, L. R. 6 H. L 189.
(*d*) *Transvaal Lands Co.* v *New Belgium (Transvaal) Land and Development Co.* (1914) 2 Ch. 488.
(*e*) *Greymouth Point Elizabeth Ry. & Coal Co.* (1904) 1 Ch. 32.
(*f*) *Northwest Transportation Co.* v. *Beatty*, 12 A. C. 589; *Greenwell* v. *Porter*, (1902) 1 Ch. 530; *Burland* v. *Earle*, 1902, A. C. 83.

91D. (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

Contracts by agents of company in which company is undisclosed principal.

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company, and such memorandum shall be filed in the office of the company, and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

(a) the contract shall, at the option of the company, be void as against the company; and

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

This section is entirely new. The only provision in English law at all analogous is contained in the Finance (1909-10) Act, 1910 (10 Edw., 7, cap. 8), sec. 78, under which a broker who does not send a duly stamped contract note to his principal incurs a penalty of £20 and loses any legal claim to any charge for brokerage or commission.

No time limit is provided for the exercise by the company of its option in appropriate circumstances, but presumably it should be exercised without unreasonable delay upon the contract coming to its notice. On the option being properly exercised the company will not be liable under the contract either to the agent or to the other party, but the rights of the latter against the agent(a) are not affected. It would appear that a broker, if he is in fact an agent of the

(a) *Vide* Indian Contract Act, 1872, sec. 230.

company, even though he may receive his instructions from the latter's Managing Agents, is within the section and will be liable to the penalty provided if he does not comply with its provisions.

Filing of prospectus.

[Sec. 80.]

92. (*1*) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(*2*) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(*3*) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed in manner required by this section.

(*4*) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(*5*) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

Specific requirements as to particulars of prospectus.

[Sec. 81.]

93. (*1*) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(*a*) the contents of the memorandum, with the names, descriptions and addresses of

the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company; and

(*b*) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers (if any); and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued; and

(*f*) the names and addresses of the vendors of any property purchased or acquired

by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and

(*g*) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and

(*h*) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

(*i*) the amount or estimated amount of preliminary expenses; and

(*k*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(*l*) the dates of, and parties to, every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(*m*) the names and addresses of the auditors (if any) of the company; and

(*n*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(*o*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(*2*) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement it shall not be necessary in the advertise-

ment to specify the contents of the memorandum, or the signatories thereto, and the number of shares subsribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one years after the date at which the company is entitled to commence business.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

The term "prospectus" has already been defined(a). A prospectus requires to be carefully framed. In addition to the requirements of this section as to the contents of a prospectus, the provisions of sections 84 and 100 should be borne in mind. The prospectus should not contain any misrepresentation or concealment of any material fact or misleading statement(b), but should be honestly framed and not endeavour to mislead the reader by any half-statement of the truth or unfair reservation or ambiguous phraseology. "I do not care by what means it is conveyed, or by what trick or device, or ambiguous language; all those are expedients by

(a) S. 2 (14). Prospectus means "any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any share or debentures of a company."

(b) *Brunswick, etc., Co.* v. *Muggeridge*, 1 Dr. & Sm. 383; *Venezuela Cent. Ry. Co.* v. *Kisch*, L. R. 2 H. L. 99, 123

which fraudulent people seem to think they can escape from the real substance of the transactions. If, by a number of statements, you intentionally give a false impression, and induce a person to act upon it, it is not the less false; although if one takes each statement by itself, there may be difficulty in showing that any specific statement is untrue(*a*)," and a recipient is entitled to assume that the prospectus is true in regard to statements contained in it and to rely upon it(*b*). Material contracts, which must be disclosed, are such contracts as an intending investor ought to have an opportunity of considering(*c*). Both executed as well as executory(*d*) and even verbal contracts(*e*), if material, should be disclosed. Where shares, debentures, or debenture-stock are subscribed for on the faith of a prospectus containing a misrepresentation. the allottee is entitled to repudiate the shares and claim his money back in a suit against the company for rescission(*f*). The right of the party deceived to sue the directors and others under section 100 or in an action for deceit is preserved by sub-section(*5*). A buyer of shares in the open market will not ordinarily be entitled to sue, but he may do so where it can be shown that the prospectus was intended and used to induce purchasers in the market to buy shares(*g*). An underwriter who takes up shares on the faith of a prospectus containing untrue statements has the same right to repudiate as any other subscriber(*h*).

It has been held that the mere fact that a prospectus issued by a company does not contain some of the facts or contracts required to be stated by this section. does not entitle a person who has taken shares on the faith of the prospectus to rectification of the register(*i*). But he may be entitled

(*a*) *Per* Lord Halsbury, L. C. in *Aaron's Reefs* v. *Twiss*, 1896, A. C. 273, 281.

(*b*) *Redgrave* v. *Hurd*, 20 Ch D. 14; *Smith* v. *Chadwick*, 9 A. C. 187.

(*c*) *Broome* v *Speak*, (1903) 1 Ch. 587, 619, 627; *Shepheard* v. *Broome*, 1904, A. C. 342; See also *Twycross* v. *Grant*, 2 C. P. D. 469; *Greenwood* v *Leather Shod Wheel Co* (1900) 1 Ch. 421: *Cackett* v. *Keswick*, (1902) 2 Ch. 456; *McConnell* v. *Wright*, (1903) 1 Ch. 546; *Macleay* v. *Tait*, 1906, A. C. 24 for instances of material contracts.

(*d*) *Broome* v *Speak* (q. v s.), at p 600.

(*e*) *Capel* v. *Sims Co.* 58 L. T. 807.

(*f*) *Reese River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 79; *London & Staffordshire Co.* 24 Ch. D. 149.

(*g*) *Andrews* v. *Mockford*, (1896) 1 Q. B. 372.

(*h*) *Karberg's case*, (1892) 3 Ch. 1; cf. *Mohun Lal* v. *Sri Gungaji Cotton Mills Co.* 4 C. W. N. 369.

(*i*) *Wimbledon Olympia Ld.* (1910) 1 Ch 630.

to a remedy in damages against the persons responsible for the prospectus(*a*). When, however, the breach involves misstatement of material facts the right of rescission under the general law remains(*b*). The terms of the section will cover a prospectus published abroad, and a person who subscribes on the faith of it may be entitled to relief(*c*).

The Act itself does not state expressly what is to be the result if the requirements of this section (or of section 98 as regards contents of the statement in lieu of prospectus) are not complied with though section 97 contemplates a liability in damages on the part of the "director or other person responsible for the prospectus." But under section 101 unless the minimum subscription is set out in the prospectus, an allotment shall not be made unless the whole of the share capital offered to the public is subscribed. Again, section 105 makes any expenditure on underwriting *ultra vires* unless the amount is disclosed in the prospectus.

Meaning of "vendor" in section 93.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

[Sec. 81 (2).].

(*a*) the purchase-money is not fully paid at the date of issue of the prospectus; or

(*b*) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

In a case where property sold to a company had been purchased and paid for by the vendor to the company the

(*a*) *South of England Nat. Gas, etc., Co.* (1911) 1 Ch. 573.

(*b*) Cf. *Leeds and Hanley Theatre of Varieties,* (1902) 2 Ch. 809, 823, 832; *Bentinck* v. *Fenn,* 12 A. C. at p. 671; *Mair* v. *Rio Grande Rubber Estates Ltd.* 1913, A. C. 853.

(*c*) *Roussell* v. *Burnham,* (1909) 1 Ch. 127.

day before the issue of the prospectus, it was held that the company was not a sub-purchaser(a). Generally speaking, a company is not a sub-purchaser for the purposes of the section unless it has to pay purchase-money, which includes debentures and shares, to some one other than its own vendor, *e.g.*, the vendor or person from whom such immediate vendor purchased(b).

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

[Sec. 81 (3).]

Application of section 93 to the case of property taken on lease.

96. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

[Sec. 81 (4).]

Invalidity of certain conditions as to waiver or notice.

A "waiver clause" used to be inserted in the prospectus and form of application, and, if honest, was valid(c). But any such clause in future will be void under this section.

97. In the event of non-compliance with any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

[Sec. 81 (6).]

Saving in certain cases of non-compliance with section 93.

(a) as regards any matter not disclosed, he was not cognisant thereof; or

(a) *Brookes* v. *Hansen*, (1906) 2 Ch. 129.
(b) See *dictum* of Joyce, J. in *Brookes* v. *Hansen* (q. v. s.) at p. 136.
(c) *Macleay* v. *Tait*, 1906, A. C. 24.

(b) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in clause (n) of sub-section (1) of section 93, no such director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

This section does not provide a remedy against persons responsible for a prospectus which does not comply with the requirements of section 93, nor does it indicate what such remedy may be. It however exonerates them if they can prove certain matters. In a recent case(a) where the prospectus omitted to mention previous offers of shares to the public and the number allotted, it was held that such omission did not entitle a shareholder to rescission, and that decision was followed in a still later case(b) in which it was held that the remedy of the allottee was in damages against the persons responsible for the prospectus. Fraud need not be proved, though the plaintiff must be in a position to show that he was induced to subscribe by the non-compliance with the section, which obviously cannot be the case when he has knowledge otherwise of the information omitted(c). Liability under the general law and the Act apart from section 93 is preserved by sub-sec. (5) of that section. In the English Statute the provisions of sections 93 and 97 of the Indian Act are comprised within the same section (81) The effect, if any, of the severance of the provisions of sections 93 (5) and 97, has yet to be determined. This section it should be observed in no way affect liability for mis-statements in a prospectus. These are dealt with by section 100, in the notes under which the remedy of a shareholder who has been induced thereby to take shares, and defences open to persons charged are considered.

(a) *Wimbedon Olympia, Ld* (1910) 1 Ch. 630.
(b) *South of England Nat. Gas Co* (1911) 1 Ch. 573
(c) See Palmer's Company Precedents, 11th Ed. Pt. 1, p. 171 and *Nash* v *Calthorpe* (1905), 2 Ch. 237; *Macleay* v *Tait*, 1906, A. C. 24; *Smith* v. *Chadwick*, 9 A. C. 187. The first two of these cases were under sec. 38 of the Companies Act, 1867 (Indian Companies Act, 1882, s. 88) which declared a prospectus to be fraudulent if it did not specify material contracts.

98. (*1*) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule.

[Sec. 82.]

Obligations of companies where no prospectus is issued.

(*2*) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital

A company is not bound to issue any prospectus, but where it does not do so it will have to disclose under this section(*a*) practically the same information as it would have to state in a prospectus, and any person may have inspection of the statement in lieu of prospectus at the office of the registrar(*b*). If the statement contains wilfully inaccurate statements the appropriate penalty is imposed by sec. 282, and any applicant who applies for shares on the faith of a filed statement has the same individual right of rescission in the case of a mis-statement or omission which he would have had if he had relied on a prospectus. But the requirements of the section about proceeding to allotment are satisfied by the mere filing of the statement, whether the particulars are or are not sufficiently supplied, and an allotment is not vitiated by their want of accuracy(*c*).

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of

[Sec. 83.]

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

(*a*) See the second schedule to the Act for form of statement.
(*b*) Sec. 248(5).
(*c*) *Blair Open Hearth Furnace Co. Ltd.* (1914) 1 Ch. 390.

prospectus, except subject to the approval of the company in general meeting.

Liability for statements in prospectus.

100. (*1*) Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

[Sec. 84.]

(*a*) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true;

(*b*) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the

report or valuation: Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

(c) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved—

(i) that having consented to become a director of the company he withdraw his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent; or

(iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(*2*) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(*3*) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnity the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(*4*) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(*5*) For the purposes of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion

thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

(b) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

This section aims at fixing the directors and others with personal liability for mis-statements in a prospectus. It does not give an allottee a right to repudiate his shares or any right of action against the company.

An untrue statement in a prospectus means a statement untrue in fact(a), but it also includes a statement which, though in some sense literally true, conveys a misleading impression to those who read it(b). The words "by reason of any untrue statement" mean "by reason of being induced to take shares by the untrue statement(c)."

The term "promoter" is introduced into the Act by this section. Sub-section(5)(a) does not, it is conceived, define the term for all purposes, but limits the applicability of this section as regards individuals. It has been judicially stated to be a term, not of law, but of business(d), and to have no very definite meaning(e), though Cockburn, C. J., defines a promoter as one who undertakes to form a company with reference to a given project, and to set it going, and to take the necessary steps to accomplish that purpose(f). The date when a person becomes a promoter is frequently of

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(a) *Broome* v. *Speak*, (1903) 1 Ch. 602.

(b) *Greenwood* v. *Leather Shod Wheel Co.* (1900) 1 Ch. 421, 434; *Aaron's Reefs, Ltd.* v. *Twiss*, 1896, A. C. 273.

(c) *McConnell* v. *Wright*, (1903) 1 Ch. 550.

(d) Bowen, L. J. in *Whaley Bridge Co.* v. *Green*, 5 Q. B. D. 111.

(e) Lindley, L. J. in *Emma Mining Co.* v. *Lewis*, 40 L. T. 749; 11 Ch. D. 918.

(f) *Twycross* v. *Grant*, 2 C. P. D. 469, 541.

importance, though difficult of determination, and no rule of general applicability can be laid down(*a*).

"Promoters stand in a fiduciary position towards the company; they have in their hands the creation and moulding of the company; they have the power of defining how, and when, and in what shape, and under what supervision, it shall start into existence and begin to act as a trading corporation....it is incumbent upon the promoters to take care that in forming the company they provide it with an executive, that is to say, with a board of directors......who shall be competent and impartial judges....who can exercise an independent and intelligent judgment.(*b*)" "The company, until in the hands of its own board, is but the creature of the promoters, unable to consider its own interest or act on its own behalf(*c*)"

The consequences of this fiduciary relationship of the promoter to the company are that the promoter must "before he can retain a profit for himself deal with his principal on the footing of making a full and fair disclosure of everything material to the dealing or transaction in which he acts in a fiduciary capacity(*d*)." Whether promoters are in fact acquiring any asset as trustees for a company or intended company is a question of fact: where the whole scheme has throughout been that they are to sell to the intended company at a profit the assets which they are acquiring, the natural inference is that, given those assets, they are not intending to be trustees for the company, but are intending to occupy the relationship to the company of vendors. That this relationship when complied with promotion involves certain fiduciary duties is undoubted, and the breach of these duties may involve unpleasant legal consequences as in *Erlanger* v.

(*a*) As to acts of promotion see the following cases:—*Ladywell Co.* v. *Brookes*, 35 Ch. D., 400; *Gover's case*, 1 Ch. D. 182; *Lydney Co.* v. *Bird*, 33 Ch. D. 85; *Lagunas Nitrate Co* v *Lagunas Syndicate*, (1899) 2 Ch. 428; *Olympia Ld.* (1898) 2 Ch. 153, 181, 182; *Gluckstein* v. *Barnes*, 1900, A. C. 240, 256.

(*b*) *Per* Lord Cairns in *Erlanger* v. *New Sombrero Phosphate Co.* 3 A. C. 1218, 1236.

(*c*) *Per* Neville, J. in *Brazilian Rubber Plantations and Estates, Ld.* (1911) 1 Ch. 425, 437.

(*d*) *Per* Jessel, M. R. in *Emma Mining Co.* v. *Grant*, 11 Ch. D. 937.

New Sombrero Co., Gluckstein v. *Barnes*(a), and numerous other cases; but it is only confusing matter to identify such a fiduciary relationship with ordinary out-and-out trusteeship and the difference is clearly recognised in *Erlanger* v. *New Sombrero Co.*(a), and in *Ladywell Co.* v. *Brookes*(b) and above all, *Leeds and Hanley Theatre of Varieties*(c). The authorities cited by Sir Francis Palmer do not support the proposition(d) that "the question where the status of a promoter was first acquired is occasionally one of great moment, especially where the promoter resells to the company at a profit property recently acquired by him; for if he bought before he became a promoter he may resell to the company as a profit, subject only to making due disclosure. Whereas if he bought after beginning to promote, the position is infinitely more onerous. The company in such case is entitled to treat the promoter as having acted on its behalf in acquiring the property, and to insist on taking it at the price he gave for it. And no disclosure on the part of the promoter will enable him to retain the profit, for the property is in equity not his but the company's, that is to say, it is impressed in the promoter's hands with a trust for the company(e). "

The remedy provided by the section is new as far as India is concerned. In the Act of 1882 the only section relating to frauduent prospectuses was section 88, which, except for the addition of certain words giving effect to English decisions was a reproduction of section 38 of the Companies Act, 1867. These sections which have been repealed, the former by the Indian Companies Act, 1913, and the latter by the Companies Act, 1900, required particulars of contracts to be disclosed in a prospectus, and laid it down that any prospectus not making the disclosure required should be deemed fraudulent on the part of promoters, directors, or officers of the company knowingly issuing the same, as regards any person taking shares on the faith of it and without notice.

As regards misleading and untrue statements in a prospectus, the remedy lay in an action of deceit by the aggrieved

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(a) 3 A. C. 1218, 1236, and 1900, A. C. 240, 256, respectively.
(b) 35 Ch. D. 400.
(c) (1902) 2 Ch. 809.
(d) Palmer's Company Precedents, 11th Ed., Pt. I, pp. 132, 133.
(e) *Per* Sargant J. in *Omnium Electric Palaces (Ltd.)* v. *Baines*, (1914) 1 Ch. 332.

person against the promoters, directors or officers responsible for it. In an action for deceit the plaintiff must prove actual fraud. A false statement made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit(*a*). The plaintiff in such an action must also establish that the fraud was an inducing cause to the contract, for which purpose it must be material and it must have produced in his mind an erroneous belief influencing his conduct(*b*). The action of deceit still exits, but in many cases to which it would apply the Directors Liability Act, 1890, (incorporated in section 84 of the Companies Consolidation Act, 1908) provided a more effective remedy. This remedy has now been introduced into India by this section. The Directors Liability Act was passed in the year following the decision in *Derry* v. *Peek* for the express purpose of getting rid of that decision, so far and so far only as directors and promoters issuing a prospectus on the one hand, and persons taking shares and debentures on the other hand, are concerned(*c*) By the section the *onus* is shifted on to the defendant. Once the plaintiff has proved that the person charged was responsible for a statement if the prospectus which was untrue or misleading, that he subscribed on the faith of the prospectus and has suffered damage. he will have established the liability under the section. The defendant may rely upon the statutory defences(*d*), and prove that with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe and did up to the time of allotment believe that the statement was true or fairly represented the facts(*e*); where the misleading or untrue statement purports to be a statement of an expert or official person, or to be contained in what purports to be a copy of or extract from a report or valuation of an expert or a public official document, the

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(*a*) *Derry* v. *Peek*, 14 A. C. 337.
(*b*) *Smith* v. *Chadwick*, 9 A. C. 187, 190.
(*c*) *McConnell* v. *Wright*, (1903) 1 Ch. 546, 558.
(*d*) *Shepheard* v. *Bray*, (1906) 2 Ch. 235, 245.
(*e*) *Greenwood* v. *Leather Shod Wheel Co.* (1900) 1 Ch. 421; *Shepheard* v. *Broome*, 1904, A. C. 342.

defendant may prove that the misleading or untrue statement correctly and fairly represented the statement, or was a correct and fair copy of or extract from the report, valuation or public official document on the authority of which it was made. But the defendant will not be excused if the plaintiff can prove that the defendant had no reasonable ground for believing that the person making the statement, report or valuation was competent to make it(*a*). The existence of a reasonable ground for belief in the truth of any statement is established by the proof of any facts or circumstances which would induce that belief in the mind of a reasonable man, that is to say, a man who stands midway between the careless and the over-cautious man. Applying this principle it was decided in a recent case that the uncorroborated statements of a vendor and promoter afford, by themselves, no reasonable ground for believing them to be true(*b*). The defences enumerated in sub-sections (*1*) (i) (ii) (iii) will also be available if facts to support them can be proved. But a director will not be absolved if he leaves the statements to his legal advisers without further enquiry upon his own part, and a plea of ignorance on the part of a director can only be maintained where the facts enable him to establish a right to say that the prospectus is not a document for which he is responsible(*c*). Nor will it be any answer for a director to prove that the statement untrue at the time subsequently became true(*d*). If a director dissents from the prospectus, or it is issued without his knowledge and consent, he should give public notice of the fact; it will not be enough to repudiate in a defence to a suit brought against him(*e*).

In order to escape from the penalty incurred by non-performance of the obligations as to the contents of a prospectus it became the practice to insert in the prospectus and in the application form a condition, known as a "waiver clause," under which the applicant waived any claim he might have for non-compliance with the requirements of the section, and an honest waiver clause was held to be perfectly valid. But this practice will be of no avail in the future, for under section 96 any such clause is void.

(*a*) *Angus* v. *Clifford*, (1891) 2 Ch. 449.
(*b*) *Adams* v. *Thrift*, (1915) 1 Ch. 557.
(*c*) *Watts* v. *Bucknall*, (1902) 2 Ch. 628; (1903) 1 Ch. 766; *Shepheard* v. *Broome* (q. v. s.); *Hoole* v. *Speak*, (1904) 2 Ch. 732.
(*d*) *McConnell* v. *Wright*, (q. v. s.).
(*e*) *Drincqbier* v *Wood*, (1899) 1 Ch. 393.

Allotment.

Restriction as to allotment.

101. (*1*) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely :—

[Sec. 85.]

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(*2*) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(*3*) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(*4*) If the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money

with interest at the rate of seven per cent. per annum from the expiraton of the one hundred and thirtieth day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(*5*) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(*6*) This section, except sub-section (*3*) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(*7*) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

The whole section, except sub-section (7), applies to the first allotment of shares offered to the public for subscription. Where a company files a statement in lieu of prospectus and does not invite the public to subscribe, sub-section (7) applies, subject to the exception contained in the concluding words of the section. Sub-section (3) applies to allotments other than the first.

The minimum subscription may be stated in any way provided it be expressly stated(*a*). The prospectus referred to in sub-section(*1*)(a) is the document offering capital to the public on the basis of which the applicant has actually subscribed(*b*). The sum payable on application must have been "paid to and received by the company." and cheques must actually be cleared before allotment(*c*).

Whether an offer of shares is an offer "to the public" will depend upon the circumstances of each case and no rule of general application has been laid down. Where directors sent copies of a prospectus marked "Strictly private and confidential: not for publication" to their friends, it was held not to be an offer to the public(*d*). But in another case where a promoter sent copies of a prospectus marked "Private and confidential" to shareholders in certain gas companies in which he was interested, it was held that this was an offer to the public(*e*). Where reconstruction takes place, it is not an offer to the public to offer shares in the new to members of the old company in respect of their shares in the latter(*f*).

Effect of irregular allotment.

102. (*1*) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting

[Sec. 86.]

(*a*) *West Yorkshire Agency,* 1908, W. N. 236; *Roussell* v *Burnham,* (1909) 1 Ch. 127.

(*b*) *Roussell* v. *Burnham,* (q. v. s)

(*c*) *National Motor Mail Coach Co.* (1908) 2 Ch. 228; *Mears* v. *Western Canada Co.* (1905) 2 Ch. 353; *Burton* v. *Bevan,* (1908) 2 Ch. 240.

(*d*) *Sherwell* v. *Combined Incandescent Mantles Synd.* 23 T. L. R. 482.

(*e*) *South of England Natural Gas, etc. Co.* (1911) 1 Ch. 573.

(*f*) *Booth* v. *New Afrikander Gold Mining Co.* (1903) 1 Ch. 295.

of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

An allotment, irregular under section 101, is voidable only at the instance of the shareholder, not of the company(a), and the shareholder need not commence legal proceedings within the month, provided he be prompt and has given notice of avoidance within that time(b). As to the interpretation to be placed upon the words "knowingly contravenes," see *Burton* v. *Bevan*.

Restrictions on commencement of business.

103. (1) A company shall not commence any business or exercise any borrowing powers unless—

[Sec. 87.]

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash a proportion equal to the proportion payable on application and allotment on the

(a) *Burton* v. *Bevan*, (1908) 2 Ch. 240.
(b) *National Motor Mail Coach Co.* (1908) 2 Ch. 228.

shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(*c*) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors in the prescribed form, that the aforesaid conditions have been complied with; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(*2*) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(*3*) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(*4*) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

For form of declaration before commencing business see Schedule to the Indian Companies Rules, 1914, Forms IV, V.

If the Company never becomes entitled to commence business, it will never become bound by a contract entered into by it. Where a company enters into a "provisional" contract, *i.e.*, before the date at which it is entitled to commence business, the contract is to be read as if it contains a provision that it shall not be binding on the company unless and until the company becomes entitled to commence business(*a*). If the statement in lieu of prospectus has been filed under sec. 98 and the registrar has given his certificate under sec. 103(2) the company can proceed to allotment notwithstanding that the statement contains mis-statements and omissions and the allotment will not be vitiated thereby(*b*).

Return as to allotments.

104. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

[Sec. 88.]

(*a*) file with the registrar a return of the allotments, stating the number and nominal

(*a*) *Otto Electrical Manfg. Co.* (1906) 2 Ch. 390; *Clinton's case.* (1908) 2 Ch. 515; *New Druce—Portland Co.* v. *Blakiston*, 24 T. L. R. 583.

(*b*) *Blair Open Hearth Furnaces Co. Ltd.* (1914) Ch. 390.

amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner(*a*) of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(*2*) Where such a contract as above-mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(*3*) If default is made in complying with the requirements of this section, every officer of the

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(*a*) *Vide* Indian Companies Rules, 1914, R. 3.

company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

For form of return of allotments and of particulars of oral contracts, see Schedule to the Indian Companies Rules, 1914, Forms VI, VII.

A company cannot issue shares at a discount; the liability to pay the full amount of the shares is imposed by the Act(a), but a company may accept money's worth in lieu of cash, and so long as the company honestly regards the consideration given as fairly representing the nominal value of the shares in cash, its estimate will not be critically examined(b). But it will be otherwise where the contract shows on its face that the property is not an equivalent for the amount of the capital which it is proposed to exempt from liability, and a vendor cannot validly stipulate not only for the satisfaction of the purchase price in fully paid shares but also for further fully paid shares on future increases in the company's nominal capital(c).

Payment in "cash" means such a transaction as would in an action at law for calls on the shares support a plea of

(a) *Ooregum Co.* v. *Roper*, 1892, A. C. 125; *Almada & Tirito Co.* 38 Ch. D. 415, 423; *Addlestone Linoleum Co.* 37 Ch. D. 191; *Welton* v. *Saffery*, 1897, A. C. 299; *Moseley* v. *Koffyfontein Mines*, (1904) 2 Ch. 108.
(b) *Ooregum Co.* v. *Roper* (q. v. s.), cf. *Wragg Ltd.* (1897) 1 Ch. 796
(c) *Hong-Kong & China Gas Co* v. *Glen*. (1914) 1 Ch. 527.

payment(a). The word "officer" in sub-sec. (3) includes a liquidator in the voluntary winding up of the company(b). A company borrowed money by the issue of bonds repayable with a bonus out of profits. The company made no profits and it was arranged to satisfy or extinguish the bonus by the issue to the bondholders of fully paid shares. It was held that it was *ultra vires* for the company to make the charge on future net profits a charge on capital and a present debt and to issue shares fully paid up in satisfaction of the debt so created, the charge being exclusively on income(c).

A transferee of unpaid shares who takes them as paid upon the faith of the certificate without notice of any liability will be entitled to hold them as paid(d), and the company and liquidator will be estopped from alleging that the shares are not fully paid(e), even against a firm, notwithstanding that one of the members of the firm is one of the directors who signs the certificate creating the estoppel(f).

A purchaser with notice who takes from a purchaser without notice will be protected(g).

The popular expression "going to allotment" was considered in a recent case, where the plaintiff had lent the defendant £ 50 to assist in the promotion of a company on condition that £ 100 were repaid within seven days if the company going to allotment. The allotment in fact was illusory, but the court held that going to allotment took place as soon as the directors resolved to go to allotment and took the necessary steps to make their resolution effective whatever the subsequent results might be(h). But this case does not establish any principle in regard to allotment as between the company and the allottees.

(a) *Spargo's case*, 8 Ch 407, followed in *Parshotomdas* v. *Ishvardas*, I. L. R. 16 Bom. 16; *Larocque* v. *Beauchemin*, 1897, A. C. 358; *North Sydney Co.* v. *Higgins*, 1899, A. C. 263.
(b) *X Co. Ld.* (1907) 2 Ch 92
(c) *Famatina Development Corp* v *Bury*, 1910, A. C. 439.
(d) *Burkinshaw* v. *Nicolls*, 3 A C 1004
(e) *Bloomenthal* v. *Ford*, 1897, A. C. 156.
(f) *Coasters Ld.* (1911) 1 Ch. 86.
(g) *Gulabdas* v. *Bhaidas*, I. L. R. 17 Bom. 67.
(h) *Ellett* v. *Sternberg*, 27 T. L. R. 127.

Commissions and Discounts.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

[Sec. 89.]

105. (*1*) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(*2*) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any

property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

For form of statement as to commission where shares are not offered to the public, see Schedule to the Indian Companies Rules, 1914, Form VIII.

This section makes it lawful for a company to pay commissions, subject to certain conditions, for "underwriting" and "placing" shares. "Underwriting" means "agreeing to take so many shares, more or less in number, as are specified in the underwriting letter, if the public do not subscribe for them(a)." "Placing" means agreeing "to procure other persons to take the shares(b)." A company is only forbidden by sub-section(2) from applying shares or capital money in payment of commission. Payment of a commission out of profits is not forbidden, and an option to take up further shares at par within a certain time is allowed(c) But if the articles authorise payment of commission by one method, payment cannot be made by another(d). The question of brokerage was considered in *Metropolitan Coal Consumers' Assoc.* v. *Scrimgeour*(e), but the case does not settle

(a) *Per* Lindley, L. J. in *Licensed Victuallers' Mutual Trading Assoc. e p. Audain*, 42 Ch. D. 1, 7, see Palmer's Company Precedents, 11th Ed Pt II, 275—295.

(b) *Per* Mellish, L. J. in *Gorrissen's case*, 8 Ch. 507, 515.

(c) *Hilder* v. *Dexter*, 1902, A. C. 474

(d) *Booth* v. *New Afrikander Gold Min Co.* (1903) 1 Ch 295.

(e) (1895) 2 Q. B. 604.

what is "brokerage" and what is "commission for procuring subscriptions," and as Lord Justice Buckley observes in his book, "it remains to be seen where the Court will draw the line between" the two(*a*). If a commission is paid without the conditions specified in the section being complied with, the money may be recovered in a suit by the company(*b*).

Statement in balance-sheet as to commissions and discounts.

106. [Sec. 90.] Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of interest out of Capital.

Power of company to pay interest out of capital in certain cases.

107. [Sec. 91.] Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(*1*) no such payment shall be made unless the same is authorised by the articles or by special resolution;

(*a*) 9th Edn. p. 216.

(*b*) *Dominion of Canada General Trading and Investment Syndicate* v. *Brigstocke*, (1911) 2 K. B. 648.

(*2*) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Local Government, which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section;

(*3*) before sanctioning any such payment, the Local Government may, at the expense of the company, appoint a person to inquire and report to such Local Government as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(*4*) the payment shall be made only for each period as may be determined by the Local Government; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(*5*) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the Governor-General in Council may, by notification in the Gazette of India, prescribe;

(*6*) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;

(*7*) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of

capital during the period to which the accounts relate;

(8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

Certificates of Shares, etc.

Limitation of time for issue of certificates.

108. (1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

[Sec. 92.]

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, etc.

Certain mortgages and charges to be void if not registered.

109. (1) Every mortgage or charge created after the commencement of this Act by a company and being either—

[Sec. 93.]

(a) a mortgage or charge, for the purpose of securing any issue of debentures; or

(b) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

(*d*) a mortgage or charge on any book debts of the company; or

(*e*) a floating charge on the undertaking or property of the company;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner(*a*) are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable:

Provided that—

(*i*) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or

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(*a*) *Vide* Indian Companies Rules, 1914, R. 4

copy are to be filed with the registrar; and

(ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property.

For form of particulars of mortgages and charges, see Schedule to the Indian Companies Rules, 1914, Form IX.

This section does not give any company power to borrow. Whether or not a company has power to borrow depends upon the objects specified in the memorandum of association, and the articles of association can be looked at for the purpose of explaining a power to borrow contained in the memorandum(a). A power to borrow need not be express, it may be implied, and in the case of a trading company an implied power to borrow will be regarded as inciden-

(a) *Southern Brazilian etc. Ry. Co.* (1905) 2 Ch. 78.

tal to carrying on its business(*a*). In the case of a non-trading company, however, the memorandum or articles of association must contain something to show, or from which it may fairly be inferred, that the company has power to borrow. If a company has no power to borrow, either express or implied, it can apply to the court under section 12 and thereby take such a power, provided it can make a case within that section. The exercise of the borrowing powers of a company will be governed by the articles of association, which will probably be found to permit the directors to exercise the borrowing powers of the company, either in their entirety or subject to limitation as regard amounts, unless with the sanction of a resolution of the company at a general meeting. But an article of a similar nature is not essential to enable the directors to borrow. If the company has the power, a general clause, like Cl. 71 of Table A, vesting in the directors the general powers of the company, will suffice. There is, further, a distinction between loans which a company is empowered to raise under its borrowing powers, and debts which it contracts in meeting its current liabilities and in the actual carrying on of its affairs(*b*).

Where a company has power to borrow it may borrow in such manner as it thinks fit. It may charge all its property(*c*) including its uncalled capital, provided there is power in the memorandum, or power in the articles and nothing to the contrary in the memorandum, to charge uncalled capital(*d*). But capital, which in sections 68 and 69 is referred to as capital which is not capable of being called up, "except in the event and for the purposes of the company being wound up" and is commonly known as "reserve capital," cannot be charged in the exercise of a power to charge uncalled capital(*e*). Sir Francis Palmer, however, referring to the judgment of the Privy Council in *Newton* v. *Debenture Holders of Anglo-Australian, etc., Co.* questions the decision in *Bartlett* v. *Mayfair Property Co.* and the distinction which the cases make between reserve and uncalled capital(*f*).

(*a*) *Re Badger,* (1905) 1 Ch 568, 574 . *General Auction Co.* v, *Smith,* (1891) 3 Ch. 432.

(*b*) *Kernot* v. *Walton,* I. L. R. 9 Cal 14

(*c*) *Patent File Co.* 6 Ch. 83.

(*d*) *Re Pyle Works,* 44 Ch. D. 434 ; *Newton* v. *The Debenture Holders of Anglo-Australian etc. Co.* 1895, A. C 244.

(*e*) *Bartlett* v. *Mayfair Property Co.* (1898) 2 Ch. 28.

(*f*) Palmer's Company Precedents, 11th Ed. Pt. III, 68-72.

A company may borrow by legal or equitable mortgage, by bonds, by promissory notes, by bank overdraft(*a*), by debentures or debenture stock, or by a floating charge on its whole undertaking(*b*), of which only the last two call for special comment.

The distinction between a specific and floating charge has been thus stated by Lord Macnaughten :—"A specific charge, I think, is one that without more, fastens on ascertained and definite property or property capable of being ascertained and defined; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over, and, so to speak, floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach or grasp(*c*)."

A floating charge on the undertaking of a company leaves the company free until some event, such as the appointment of a receiver, or the commencement of winding up, occurs, which causes the charge to attach, to dispose of its property by sale or mortgage and to pay its debts while carrying on its business in the ordinary course(*d*).

A floating charge created on the undertaking or property of a company within three months of the commencement of the winding up of the company is invalid except to the amount of cash paid in consideration at the time or after the creation of the charge, together with interest at five per cent. per annum, unless it is proved that the company was solvent immediately after the creation of the charge(*e*).

Debentures may be roughly divided into mortgage-debentures, which give a charge on all or some part of the

(*a*) *Cunliffe, Brooks & Co.* v. *Blackburn Benefit Socy.* 9 A. C. 857, 865.
(*b*) *Panama etc. Mail Co.* 5 Ch. 318.
(*c*) *Illingworth* v. *Houldsworth*, 1904, A. C. 355, 358; and see Lord Macnaughten's definition of floating charge in *Government Stocks etc. Co.* 1897, A. C. 81.
(*d*) Instances are to be found in the following cases :—*Florence Land Co.* 10 Ch. D. 530; *Moor* v. *Anglo-Italian Bank*, 10 Ch. D. 681; *Hamilton's Windsor Iron Works*, 12 Ch. D. 707; *Biggerstaff* v. *Rowatts Wharf*, (1896) 2 Ch. 93; *Borax Co.* (1901) 1 Ch. 326; *H. H. Vivian & Co.* (1900) 2 Ch. 654; *Wheatley* v. *Silkestone Co.* 29 Ch. D. 715; *Government Stocks etc. Co.* 1897, A. C. 81; *Robinson* v. *Burnell's Bakery*, (1904) 2 K. B. 624; *Nelson & Co.* v. *Faber & Co.* (1903) 2 K. B. 367.
(*e*) S. 233. See Palmer's Company Precedents, 11th Ed. Pt. III, 79-92, as to floating charges.

company's assets; and debentures which give no charge, and merely amount to a promise to pay a sum of money. The former class is the more common, and the charge given is usually a floating charge, though it may be, and in the case of non-trading companies frequently is, a specific charge.

The precise meaning of "debenture" is by no means clear. The Act does not attempt a definition. "It is a very wide term, but it is now generally used to signify a security for money called on the face of it a debenture and providing for the payment of a specified sum—say 100*l*—at a fixed date, with interest meantime half-yearly(*a*)." Debentures may be in various forms and may be payable to bearer or registered holder. On their face they usually contain the bond or covenant and charge, while the conditions are generally indorsed on the back. These conditions may vary considerably, but some of the more common conditions may be referred to. One of such is the *pari passu* clause, making all debentures of the same issue rank with each other, and, if so drawn, enabling the company to issue debentures in place of debentures paid off, or to issue further debentures of the same series provided a certain specified amount is not exceeded(*b*).

Another condition states the events upon which the principal moneys shall become payable, and usually it is so if default is made in payment of interest. Even if there is no such condition the money will become repayable on commencement of a winding up(*c*). Debentures payable to bearer have all the qualities of a negotiable instrument(*d*)

Debentures not infrequently are, and debenture stock almost invariably is, accompanied by a trust-deed. Such

(*a*) Palmer's Company Law, 9th Edn., 283. The meaning of the term has been discussed in the following cases:—*Gardner* v. *L. C. & D. Ry.* 2 Ch. 201; *Levy* v. *Abercorris Co* 37 Ch. D. 264, *Robson* v. *Smith,* (1895) 2 Ch. 118; *B. I. S. N. Co.* v *Commsrs of Inland Rev.* 7 Q. B. D. 165; *Florence Land Co.* 10 Ch D. 530, 539; *Edmonds* v. *Blaina Furnaces Co.* 36 Ch. D. 215; *Topham* v. *Greenside,* 37 Ch. D. 281, 291; *Jenkinson* v *Brandley Mining Co.* 19 Q. B. D. 568; *City of London Brewery Co.* v. *Commsrs. of Inland Rev.* (1899) 1 Q B. 121; *Ross* v *Army and Navy Hotel Co.* 34 Ch. D. 43.

(*b*) *Gartside* v. *Silkstone Coal Co.* 21 Ch. D 762

(*c*) *Wallace* v. *Universal Automatic Machine Co.* (1894) 2 Ch. 547.

(*d*) *Edelstein* v. *Schuler & Co.* (1902) 2 K. B. 144 following *Bechuanaland Exploration Co.* v. *London Trading Bank,* (1898) 2 Q. B. 658; *vide* also *Goodwin* v. *Roberts,* L. R. 10 Ex. 337; 1 A. C. 476

a trust-deed is made between the company and trustees and contains a charge on the company's property. The trustees are to allow the company to use the charged premises until the happening of an event which makes the principal moneys repayable(*a*). There may be a provision enabling a majority of the debenture-holders to bind the minority by modifying their rights(*b*), and where powers are given to some only of the debenture-holders they must exercise them in the interests of all the debenture-holders(*c*). The Act states that "debenture" includes "debenture stock(*d*)." Debenture stock is borrowed capital consolidated into one mass for the sake of convenience. Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum, being a portion of one large loan(*e*). Where there is no direct covenant with the stock-holder to pay him the interest, a stock-holder whose interest is in arrear will not be entitled to present a winding-up petition(*f*).

Where a company borrows without having the power in the memorandum of association, or in excess of any limit therein laid down, such borrowing will be *ultra vires* the company, and cannot be ratified, nor can the company make it good by taking or extending its borrowing powers under section 12, and securities given will be inoperative(*g*). If a corporation which has no power to borrow, or has exhausted its power of borrowing, does, nevertheless, borrow or purport to borrow, then such borrowing, being *ultra vires*, creates neither at law nor in equity any debt for money lent. But if such a corporation, having incurred debts, procures from some one, who is willing to find it, money which it employs in paying off these debts, that is a legitimate operation. and the transaction is not *ultra vires*; for, to the extent to which the money found by the lender is applied in discharging the debts of the corporation, there is, in effect, no further borrowing, because the money is employed in discharging debt, and there is therefore no increase of the company's indebtedness(*h*). Where the borrowing is not *ultra vires* the

(*a*) *Melbourne Distillery*, (1901) 1 Ch 453.
(*b*) *Sneath* v. *Valley Gold, Ltd.* (1893) 1 Ch. 477
(*c*) *Maskelyne Brit. Typewriter, Ltd.* (1898) 1 Ch 133
(*d*) S. 2 (4).
(*e*) Lindley on Companies, 6th Edn. 346.
(*f*) *Dunderland Iron Ore Co. Ltd.* (1909) 1 Ch. 446.
(*g*) *Ashbury Railway Carriage Co.* v. *Riche*, L. R. 7 H. L. 653, 671.
(*h*) *Reversion Fund and Insurance Co. Ltd.* v. *Maison Cosway, Ltd.* 1913) 1 K. B. 364, 373, cf. Lindley on Companies, 6th Ed. pp. 292, 293.

company but *ultra vires* the directors, the company may ratify the act of the directors(*a*). Even where the borrowing is *ultra vires* the directors the transaction will be inoperative unless ratified or within the rule in *Royal British Bank* v. *Turquand*(*b*). Persons dealing with a company are bound to read the Act and registered documents relating to the company, and are therefore deemed to have notice of its memorandum and articles, and they must see that the proposed dealing is not precluded thereby, but they need not enquire into the "indoor management" of the company. But a person dealing with a company with notice of the irregularity, *e.g.*, that the sanction of a general meeting required under the articles has not been given, will not be protected(*c*).

The Act makes provision for two registers of mortgages and charges, one to be kept by the registrar, the other to be kept by the company. This and the seven sections next ensuing relate to the former, section 123 requires the latter. Registration under the provisions of the Companies Act in no way affects the necessity for registration of documents under the Indian Registration Act, 1908. which in certain cases is compulsory(*d*).

The effect of this section is to avoid as against creditors and liquidators, mortgages and charges not duly registered within twenty-one days after their creation, and an unregistered mortgage is avoided as against a subsequent registered incumbrances with notice(*e*). A mortgage or charge is "created" when the deed or agreement is entered into, the advance may be made subsequently(*f*). The word "charge" includes an equitable charge created by delivery to a creditor of documents of title to immovable property, with intent to create a security thereon(*g*). Where property is conveyed by a company to trustees to secure debenture or debenture stock the question whether any subsequent conveyances made for the same purpose are mortgages or not within the meaning of sub-section (*1*) (a),

(*a*) *Irvine* v. *Union Bank of Australia*, 2 A. C. 366.
(*b*) 6 E. and B. 327; *Ernest* v. *Nicholls*, 6 H. L. C. 401, 419
(*c*) *Howard* v. *Patent Ivory Co.* 38 Ch. D. 156; *Tyne Mutual Ass.* v. *Brown*, 74 L. T. 283.
(*d*) *Vide* Indian Registration Act, 1908, s. 17.
(*e*) *Monolithic Building Co.* (1915) 1 Ch. 643.
(*f*) *S. Abrahams & Sons*, (1902) 1 Ch. 695; *Watson & Co.* v. *Spiral Globe Co.* (1902) 2 Ch. 209; *Harrogate Estates, Ltd* (1903) 1 Ch. 498; *Appleyard* v. *London and Suburban Co.* (1908) 1 Ch. 621; *Esberger & Son, Ltd.* v. *Capital and Counties Bank*, (1913) 2 Ch 366.
(*g*) *Vide* Transfer of Property Act, 1882; cf. *Jackson and Bassford, Ltd.* (1906) 2 Ch. 467.

will depend upon whether the transaction is merely a sale and re-investment by the trustees or one to which the company is a party(*a*). Under the Registration Act, 1908(*b*) a debenture secured by a mortgage of immovable property to trustees for the benefit of debenture-holders will not require registration. Such mortgage would however be within that Statute, as also would, it is conceived, a debenture, where such debenture itself purports to create or declare a charge upon the immovable property of a company. Particulars registered pursuant to the section amount to constructive notice of a charge affecting the property, but not of any special provisions contained in that charge restricting the company from dealing with its property in the usual manner when the subsisting charge is a floating security(*c*).

Sub-section (d) was considered in a recent case. A company used to consign goods to their customers abroad, to whom, by the terms of sale, the property in the goods passed on shipment. In order to obtain advances from their bankers, the company wrote to the latter enclosing for their acceptance the company's drafts drawn in respect of specified shipments then being made, and copies of the bills-of-lading and invoices relating thereto, and stating that the company hypothecated the goods or the proceeds thereof to the bankers. The bankers accepted drafts in these circumstances, and on the company having gone into liquidation, claimed to be entitled to the proceeds of the goods as against the liquidator. The company was held to have created a charge on its book-debts, which charge, not having been registered, was void as against the liquidator, and the claim therefore failed(*d*). In another case a company mortgaged a book-debt to secure an advance by its bankers. It was contended that the instrument which was unregistered operated as an absolute assignment. But it was held that the deed was void, as it is impossible for parties to a transaction by way of mortgage or charge to alter the effect of the enactment by adopting a form which does not accord with the real transaction between them(*e*).

(*a*) *Cornbrook Brewery Co.* v. *Law Debenture Corp.* (1904) 1 Ch. 103; *Bristol United Breweries. Ltd.* v. *Abbott,* (1908) 1 Ch. 279 See also *Cunard S. S. Co.* v. *Hopwood,* (1908) 2 Ch. 564.

(*b*) Sec. 17(2) (*iii*).

(*c*) *Wilson* v. *Kelland,* (1910) 2 Ch. 306.

(*d*) *Ladenburg & Co.* v. *Goodwin, Ferreira & Co. Ltd and Garnett,* (1912) 3 K. B. 275.

(*e*) *Saunderson & Co. (in liquidation)* v. *Clark,* 29 T. L. R. 579.

Particulars in case of series of debenture entitling holders pari passu.

[Sec. 93 (3).]

110. Where a series of debentures containing, or given by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(*a*) the total amount secured by the whole series ; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees (if any) for the debenture-holders ;

together with the deed or a copy thereof verified in the prescribed manner(*a*) containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(*a*) *Vide* Indan Companies Rules, 1914, R. 4. See Rule 6 for fees payable on registration.

For form of particulars relating to a series of debentures see Schedule to the Indian Companies Rules, 1914, Forms X, XI.

Particulars in case of commission, etc., on debentures.

[Sec. 93 (4).]

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Register of mortgages and charges.

[Sec. 93 (2).]

112. (*1*) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(*2*) After making the entry required by sub-section (*1*), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may

be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection. [Sec. 93 (8).]

For form of register of mortgages and charges and index, see Schedule to the Indian Companies Rules, 1914, form XII and for fees payable on registration or for inspection under this section, *see* Rule 6.

Index to register of mortgages and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act. [Sec. 98.]

Certificate of registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with. [Sec. 93 (5).]

The certificate of the registrar under this section will be conclusive as regards compliance with the requirements as to registration, even though some particular required has not been supplied(*a*).

Endorsement of certificate of registration on debenture or certificate of debenture stock.

115. The company shall cause a copy of every certificate of registration given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered: [Sec. 93 (6).]

(*a*) *Cunard S. S. Co.* v. *Hopwood*, (1908) 2 Ch. 564, 578; *Leicester* v. *Yolland, Ld* (1907) 2 Ch. 471; (1908) 1 Ch 152

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

Duty of company and right of interested party as regards registration.

116. (*1*) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

[Sec. 93 (7).]

(*2*) Where the registration is affected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

Copy of instrument creating mortgage or charge to be kept at registered office.

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109, to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

[Sec. 93 (9).]

Registration of appointment of receiver.

118. (*1*) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall,

[Sec. 94.]

on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

For form of notice of the appointment of a receiver, see Schedule to the Indian Companies Rules, 1914, Form XIII, and for fees payable for registration see Rule 6.

Filing of accounts of receivers.

119. (1) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

[Sec. 95.]

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

For form of abstract of receiver's accounts and of notice to be given by receiver on ceasing to act, see Schedule to the Indian Companies Rules, 1914, Forms XIV, XV.

Rectification of register of mortgages.

120. The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the

[Sec. 96.]

position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

An order under this section extending the time for registration usually contains the following words:—"But this order is to be without prejudice to the rights of parties acquired prior to the time when such debentures shall be actually registered(*a*)."

Entry of satisfaction.

121. [Sec. 97.] The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Penalties.

122. [Sec. 99.] (*1*) If any company makes default in filing with the registrar for registration the particulars—

(*a*) of any mortgage or charge created by the company; or

(*b*) of the issues of debentures of a series,

requiring registration with the registrar under the

(*a*) *Joplin Brewery Co* (1902) 1 Ch 79; *Spiral Globe Co Ld.* (1902) 1 Ch. 396; *S. Abrahams & Sons*, (1902) 1 Ch. 695. For instances where an order has been made under this section, see *Bootle Cold Storage Co.* 1901, W. N. 54; *Beattie Ld.* 1901, W. N. 152; *Tingri Tea Co.* 1901, W. N. 165; *Mendip Press*, 18 T. L. R. 38; *Cunard S. S. Co.* 1908, W. N. 160; and for the effect of these words in an order, see *Joplin Brewery Co.*; *Spiral Globe Co.*, *S. Abrahams & Sons*; *J. C. Johnson & Co.* (1902) 2 Ch. 101; *Anglo-Oriental Carpet Co.* (1903) 1 Ch. 914; *Ehrmann Bros.* (1906) 2 Ch. 697: *Cardiff Cottage Co.* (1906) 2 Ch. 627.

foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(*2*) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(*3*) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Company's register of mortgages.

123. (*1*) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

[Sec. 100.]

(*2*) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omissions of any entry required to be

made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Non-registration under this section does not affect the validity of the charge(*a*), as in the case of non-registration under section 109.

124. (*1*) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

[Sec. 101.]

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

(*2*) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Once the company has gone into liquidation under a compulsory or supervision order, this section no longer applies(*b*).

125. (*1*) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole

[Sec. 102.]

Right to inspect the register of debenture-holders and to have copies of trust-deed.

(*a*) *Wright* v. *Horton*, 12 A. C. 371.
(*b*) *Somerset* v. *Land Securities Co.* 1897, W. N. 29.

thirty days in any year) as may be specified in the articles be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

Perpetual debentures.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period however long.

[Sec. 103.]

A doubt was raised whether a company with power to borrow could issue irredeemable debenture-stock(*a*), which has been termed a right to a perpetual annuity, payable out of the concern(*b*). and not "borrowing"(*c*). This section disposes of these difficulties.

127. (*1*) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

[Sec. 104.]

Power to re-issue redeemed debentures in certain cases.

(*2*) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(*a*) *Jarrah Timber etc. Corp.* v. *Samuel*, (1903) 2 Ch. 1, 15; 1904, A. C., 323.
(*b*) *Attree* v. *Hawe*, 9 Ch. D. 337, 349.
(*c*) *Southern Brazilian etc. Ry. Co.* (1905) 2 Ch. 78.

(3) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall

be decided as if this Act had not been passed; or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

"The general effect of this section may be expressed by saying that debentures issued and redeemed may still exist potentially. Any company which goes into the market to borrow on security will now have to show not only what secured debts are existing and outstanding, but what ghosts there are of secured debts which existed once but exist no longer, upon whose resurrection there will come into existence debts which will rank before the new lender(*a*)." The *pari passu* condition on debentures is less important than it was, but to be able to re-issue under the section the company must purport to keep the debenture paid off alive. This section displaces the law as previously laid down and has received judicial interpretation in *Fitzgerald* v. *Persse Ltd* (*b*).

Specific performance of contract to subscribe for debentures.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a degree for specific performance.
[Sec. 105.]

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.

129. (*1*) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid
[Sec. 107.]

(*a*) Buckley on Companies, 9th Edn. p. 261.
(*b*) (1908) 1 Ir. 279.

in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

The preferential payments referred to are those mentioned in section 230. A receiver appointed by debenture-holders, who, after notice of any claim that is preferential under this section. pays away the company's assets to ordinary creditors in the process of carrying on the company's business without making or attempting to make any provision for that preferential claim, is guilty of a breach of this section and liable in damages accordingly(a).

Statements, Books and Accounts.

Company to keep proper books of account.

130. Every company shall keep proper books of account in which shall be entered full, true and complete accounts of the affairs and transactions of the company.

Annual balance-sheet.

131. (1) Every company shall, once at least in every year and at intervals of not more than fifteen months, cause the accounts of the company to be balanced and a balance-sheet to be prepared.

(2) The balance-sheet shall be audited by the auditor of the company as hereinafter provided, and the auditor's report

[Sec. 113 (3).]

(a) *Woods* v. *Winskill*, (1913) 2 Ch. 303.

shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of such balance-sheet so audited to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least seven days before that meeting.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

This section should be read with section 145. It requires an audit of the balance-sheet: the powers and duties of the auditors are laid down by section 145. When the auditors have reported as required by the latter section, this section provides that (1) the report is to be read before the company in general meeting, (2) the report shall be open to inspection by any member of the company, (3) either the report shall be attached to the balance-sheet, or a reference to it inserted at the foot thereof. At least seven days before the meeting a copy of the audited balance-sheet has to be sent to the registered address of every member of the company and to be deposited for inspection by the members at the registered office of the company. The balance-sheet ordinarily would be laid before the company as the annual general meeting held under section 76, but this is a matter that would be governed by the articles of association (*vide* Table A., cl. 108).

There is no express provision for an audit in the English Act but this can be implied from the fact that it is the duty

of the auditors to report on and certify the balance-sheet before every general meeting(*a*).

Contents of balance-sheet.

132. (*1*) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

[Sec. 26 (3).]

(*2*) The balance sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

This section not only closely follows the wording of section 26(3) of the English Act, but also prescribes a form for the balance-sheet, which the English Act does not. A balance-sheet which stated that different parts of the fixed assets had been valued in different ways, but did not give the separate values of those different parts was held to be insufficient(*b*).

Authentication of balance-sheet.

133. (*1*) Save as provided by sub-section (*2*) the balance-sheet shall—

(*i*) in the case of a banking company, be signed by the manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors;

[Sec. 113 (5) (*b*).]

(*ii*) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director

[Sec. 113 (3).]

(*a*) *Newton* v. *Birmingham Small Arms Co* (1906) 2 Ch. 378
(*b*) *Galloway* v *Schill Seebohm & Co.* (1912) 2 K. B 354.

and by the manager (if any) of the company. *

(2) When the total number of directors of the company for the time being in the British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section(1).

[Sec. 113 (4).]

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees.

Copy of balance-sheet and auditor's report to be forwarded to the registrar.

[Sec. 26 (4).]

134. (1) After the balance-sheet has been laid before the company at the general meeting, a copy thereof signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

[Sec. 26 (5).

Right of member of company to copies of the balance-sheet and the auditor's report.

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

[Sec. 113 (3).]

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

[Sec. 108.]

(2) A copy of the statement shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912, as the case may be, as to the annual statements to be made by such company or society apply with or without modifications, if the company or society complies with those provisions.

Investigation by the Registrar.

Power of registrar to call for information or explanation.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the Local Government

Inspection and Audit.

Investigation of affairs of company by inspecters. [Sec. 109.]

138. The Local Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Local Government may direct—

(*i*) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued:

(*ii*) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(*iii*) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(*iv*) in the case of any company, on a report by the registrar under section 137, sub-section(*5*).

139. An application by members of a company under section 138 shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and the Local Government may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

[Sec. 109(2).]

Application for inspection to be supported by evidence.

140. (*1*) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

[Sec. 109(3).]

Inspection of books and examination of officers.

(*2*) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(*3*) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

141. (*1*) On the conclusion of the investigation the inspectors shall report their opinion to the Local Government, and a copy of the report shall be forwarded by the Local Government to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

[Sec. 109(6).]

Results of examination how dealt with.

(2) The report shall be written or printed, as the Local Government directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the Local Government directs the same to be paid by the company, which the Local Government is hereby authorised to do.

The full extent of the power of the inspector is to hold his inquiry and make his report "The Board (i.e., Board of Trade) cannot do anything when it has received the report. The report itself is not evidence of anything contained in it, and can only be given in evidence (sec 143) as showing the opinion of the inspector in relation to any matter contained in it(a)."

Power of company to appoint inspectors.

142. (1) A company may by special resolution appoint inspectors to investigate its affairs. [Sec. 110.]

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Local Government, except that, instead of reporting to the Local Government, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Local Government.

Report of inspectors to be evidence.

143. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in [Sec. 111.]

(a) *Grosvenor Hotel Co.* 76 L. T. 337.

any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualification and appointment of auditors.

144. (1) No person shall be appointed or act as an auditor of any company other than a private company unless he holds a certificate from the Local Government entitling him to act as an auditor of companies:

Provided that the Governor-General in Council may, by notification in the Gazette of India, declare that the members of any institution or association specified in such notification shall be entitled to be appointed and to act as auditors of companies throughout British India.

(2) The Local Government shall, by notification in the local official Gazette, make rules providing for the grant of certificates entitling the holders thereof to act as auditors of companies, and may by such rules provide the conditions and restrictions on and subject to which such certificate shall be granted. The holder of such a certificate shall be entitled to act as an auditor of companies throughout British India unless such certificate restricts or limits the exercise of the right.

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

[Sec. 112.]

(4) If an appointment of an auditor is not made at an annual general meeting, the Local Government may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons: that is to say,

(i) a director or officer of the company; and

(ii) a partner of such director or officer; and

(iii) in the case of a company other than a private company, any person in the employment of such director or officer,

shall not be appointed auditor of the company.

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Members of the following institutions and associations are entitled to be appointed and to act as auditors of companies throughout British India (a):—

(1) The Institute of Chartered Accountants of England and Wales;

(2) The Society of Incorporated Accountants and Auditors;

(3) The Society of Accountants in Edinburgh;

(4) The Institute of Accountants and Actuaries in Glasgow;

(5) The Society of Accountants in Aberdeen;

(6) The Institute of Chartered Accountants in Ireland.

Power and duties of auditors.

145. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

[Sec. 113.]

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet laid before the

(a) *Vide* Gazette of India, March 14, 1914, Pt. I. p. 405. For rules under section 144 (2) *vide* Calcutta Gazette, March 25, 1914, Pt. I. p. 554; Bombay Gazette, April 2, 1914, Pt. I. p. 730; Bihar and Orissa Gazette, June 17, 1914, Pt. II, p. 663; Burma Gazette, May 30, 1914, Pt. I. p. 330; Gazette of India (Chief Commissioner Delhi) April 25, 1914, Pt. II. p. 994; Fort, St. George Gazette, May 19, 1914, Pt. I p. 739; Punjab Gazette, April 10, 1914 Pt. I p. 274; Unitted Provinces Gazette, June, 27, 1914, Pt. I, p. 801; Assam Gazette, July, 29, 1914, Pt. II. p. 1431.

company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance-sheet referred to in the report is drawn up in conformity with the law; and

(c) whether such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

The general duties of auditors have been discussed at length by Lindley, L J in *In re Kingston Cotton Mills Co* (a) and in *In re London and General Bank*(b) In particular they must see what exceptional duties, if any, are cast upon them by the articles of the company whose accounts they are called upon to audit, and under the Companies Act for the time being in force(c), but it is no part of their duty to give advice either to directors or shareholders as to what they ought to do. It is generally understood that the words "as shown by the books of the company" following upon the words "according to the best of their information and the explanations given to them," do not impliedly exempt an

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(a) (1896) 2 Ch. 279, 284.

(b) (1895) 2 Ch. 673; see also *Leeds Estate, Building and Investment Co.* v. *Shepherd*, 36 Ch. D. 787.

(c) *Republic of Bolivia Exploration Syndicate Ltd* (1914) 1 Ch 139.

auditor from travelling outside the books(a), but an auditor is bound by fair and reasonable examination of vouchers to see that there are not amongst the payments any which are not authorised by the duty of the authority, or contrary to the duty of the authority or in any other way illegal or improper(b), and if as a reasonably prudent man he ought to conclude on his investigation that something is wrong, it is his duty to call his employer's attention to the fact(c). When it is shown that the audited balance-sheets do not show the true financial condition of the company and that damage has resulted, the onus is on the auditors to show that this is not the result of any breach of duty on their part(d). Any regulations which preclude the auditors from availing themselves of all the information to which under the Act they are entitled as material for the report, which under the Act they are to make as to the true and correct state of the company's affairs, are inconsistent with the Act Where the auditor thinks that the true state of the company's affairs is affected by facts relating to an internal reserve fund he may not, any resolution to the contrary notwithstanding, withhold information with regard to the same from the shareholders(e). For the purposes of the audit the auditors will bind the shareholders, but the latter will not be concluded by the auditor's knowledge of unauthorised acts of the directors(f)

The Court will not enforce the statutory right of access to the books of the company conferred by this section by mandatory order upon an interlocutory application against the wish of the company to employ such auditors, which should be ascertained by a general meeting of the shareholders(g). Wilfully to make a statement false in any material particular, knowing it to be false, in a report, is punishable with imprisonment under section 282.

(a) Palmer's Company Law, 9th Edn. p 230

(b) *Thomas* v. *Devonport Corporation*, ((1900) 1 Q B. 16, 21

(c) *Henry Squire, Cash Chemist, Ltd* v *Ball Baker & Co* 27 T. L. R. 269, affirmed, 28 T. L. R 81.

(d) *Republic of Bolivia Exploration Syndicate Ltd* (1914) 1 Ch 139.

(e) *Newton* v. *Birmingham Small Arms Co. Ld.* (1906) 2 Ch. 378.

(f) *Spackman* v. *Evans*, L. R. 3 H. L. 171, 196, 236.

(g) *Cuff* v *London and County Land and Building Co* (1912) 1 Ch. 440.

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

146. (*1*) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

[Sec. 114.]

(*2*) This section shall not apply to a private company, nor to a company registered before the commencement of this Act.

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

[Sec. 115.]

Service and Authentication of Documents.

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

[Sec. 116.]

So far as service of legal process is concerned this section must be taken as amplified by the Code of Civil Procedure, 1908(*a*), which says that the summons in a suit against a cor-

(*a*) Order XXIX, R. 2.

poration may be served on the secretary, or on any director or other principal officer of the corporation, or by leaving it or sending it by post addressed to the corporation at the registered office.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. [Sec. 117.] A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

151. [Sec 118.] (*1*) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(*2*) The Governor-General in Council may alter any of the tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the registar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(*3*) Any such table or forms, when altered, shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act, but no alteration made by the Governor-General in Council in Table *A* in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

(*4*) In addition to the powers hereinbefore conferred by this sections, the Governor-General in

Council may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

(*5*) Every such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

Power for companies to refer matters to arbitration.

152. (*1*) A company may by written agreement refer to arbitration, in accordance with the Indian Arbitration Act, 1899, an existing or future difference between itself and any other company or person.

[Sec. 119.]

(*2*) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(*3*) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act.

The arbitration section of this Act gives greater scope to companies in the matter of arbitration than that conferred by the Indian Arbitration Act, 1899, which applies only to cases, where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could be instituted in a Presidency-town or in Rangoon(*a*).

Arbitration as to the price to be paid for the purchase of the interest of a dissentient member in a voluntary winding up, is dealt with in section 214.

(*a*) Indian Arbitration Act, 1899, ss. 2, 23.

153. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

[Sec. 120.]

Power to compromise with creditors and members.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression "company" means any company liable to be wound up under this Act.

The question, what constitutes a class of creditors or members of a company, must be determined on the facts in each case. "The term 'class' must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with the view to their common interest(a)." For instance, holders of shares partly paid with the uncalled balance paid in advance of calls are a different

(a) *Per* Bowen, L. J. in *Sovereign Life Assurance Co* v. *Dodd*, (1892) 2 Q. B. 573, 583.

class to holders of fully paid shares(*a*). The fact that members of a class have other interests will be a fact to be borne in mind by the Court when asked to sanction a scheme(*b*). The duty of the Court is not to register the decisions of the classes of creditors, but if the creditors have been properly convened, and have been properly consulted, and have considered the matter from the point of view and to the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them(*c*). In a case where the sanction of the Court was sought under this section to a scheme not involving either the consolidation of shares of different classes into shares of one class, or the division of shares of one class into shares of different classes, it was held that section 54 applied to those two modes of re-organizing share capital and the section having been complied with an order was made(*d*). The question whether compliance with this section alone would be sufficient in the case of a scheme involving a re-organization within section 54 was not considered But in a later case, this ruling was not followed, and it was held that a scheme of arrangement which alters any rights defined by the memorandum of association must satisfy the conditions laid down by section 54, although the scheme does not include the consolidation of different classes of shares or the division of shares into shares of different classes(*e*). This conflict of decisions has been set at rest by *In re Schweppes, Ltd.*(*f*) in which a proposed arrangement which did not modify the conditions contained in the memorandum and would not be an interference into any preferential rights was sanctioned by the Court of Appeal under this section. In a recent case(*g*) the provisions of this and of section 213 were considered. and sanction under this section was not granted to the scheme proposed. If proper provision is made for dissentient members, a reconstruction of an existing company by winding up and sale of the entire

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(*a*) *United Provident Ass. Co.* (1910) 2 Ch. 477, applying *Exchange Drapery Co.* 38 Ch. D. 171, 175; and *Wakefield Rolling Sock Co.* (1892) 3 Ch. 165, 174.

(*b*) *Alabama, etc. Ry. Co.* (1891) 1 Ch. 215; followed in *Bombay Cotton Manfg. Co.* 12 Bom. L. R. 525.

(*c*) *English, Scottish and Australian Chartered Bank,* (1893) 3 Ch. 385 409; cf. *London Chartered Bank of Australia,* (1893) 3 Ch. 540.

(*d*) *Palace Hotel Ltd.* (1912) 2 Ch. 438; followed in *In re J. A. Nordberg Ltd.*, (1915) 2 Ch. 439.

(*e*) *Doecham Gloves, Ltd.* (1913) 1 Ch. 226.

(*f*) (1914) 1 Ch. 322.

(*g*) *General Motor Cab Co.* (1913) 1 Ch. 377.

assets for shares in a new company may be effected under this section(*a*).

Lord Justice Buckley in his notes to the corresponding section of the English Statute discusses at some length the position of foreign or colonial creditors in relation to a scheme sanctioned by the Court under this section(*b*). The learned author formulates the proposition that a foreign creditor will not, as against assets abroad, be precluded by a scheme under the Act from enforcing by action abroad his original contract, and that to render the scheme effectual it must be rendered binding according to the law of the foreign place in which the assets are. An instance of a case where this was done is to be found referred to in *Dane* v. *Mortgage Insurance Corporation*(*c*).

Conversion of private company into public company.

154. (*1*) A private company may, subject to anything contained in its memorandum or articles, by a special resolution and by filing with the registrar a copy of such resolution and also such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a duly verified declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

[Sec. 121 (2.)]

Conversion of private into public company.

(*2*) Upon the filing of the documents mentioned in sub-section(*1*), the registrar shall record the change in his books relating to the company.

See appendix :—Private Companies.

(*a*) *Sandwell Park Coll Co. Ltd.* (1914) 1 Ch. 589; distinguishing *General Motor Cab Co.*

(*b*) Buckley on Companies, 9th Edn. p. 273.

(*c*) (1894) 1 Q. B. 57. (*Commercial Bank of Australia*).

PART V.

WINDING UP.

Preliminary.

Mode of winding up. [Sec. 122.]

155. (*1*) The winding up of a company may be either—

(i) by the Court; or

(ii) voluntary; or

(iii) subject to the supervision of the Court.

(*2*) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

Contributories.

Liability as contributories of present and past members. [Sec. 123.]

156. (*1*) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to

satisfy the contributions required to be made by them in pursuance of this Act;

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member;

(v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the

amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Liability of directors whose liability is unlimited.

157. In the winding up of a limited company any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

[Sec. 123(2).]

Provided that—

(i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upward before the commencement of the winding up;

(ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Meaning of "contributory."

158. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining

[Sec. 124.]

and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

The last of the three preceding sections defines the term "contributory;" the first states the liability of contributories upon the winding up of a company, subject to certain qualifications As soon as may be after making a winding up order, the Court settles the list of contributories(*a*). This list is made out in two parts, the *A* list of contributories being present members who are primarily liable, while the *B* list consists of past members of the company, who ceased to be members within a year(*b*) *B* contributories are not liable in any event for debts contracted since they ceased to be members(*c*), and their liability is secondary that is, they are only liable if it appears to the Court that the *A* contributories are unable to satisfy the contributories required to be made by them in pursuance of the Act(*d*) It is the practice of the Court therefore not to settle the *B* list of contributories until it has been shown that those on the *A* list are unable to satisfy the debts(*e*) The Court may make calls on the contributories and in so doing may take into consideration the probability that some of the contributories may partly or wholly fail to pay(*f*) If after the *B* list has been settled and a call made, it appears that the contributions of the *A* contributories are sufficient any *B* contributories who may have paid will be entitled to have their money returned to them(*g*).

Shareholders who transferred their shares within a year of a resolution for the voluntary winding up of a company, but more than a year before the presentation of a petition for the compulsory winding up, upon which an order was made, were held not to be liable to be placed on the *B* list as

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(*a*) S. 184
(*b*) S. 156 (1) (*i*)
(*c*) S. 156 (1) (*ii*).
(*d*) S. 156 (1) (*iii*).
(*e*) Buckley on Companies, 9th Edn 285
(*f*) S. 187.
(*g*) *Helbert* v *Banner*, L R. 5 H. L. 28, and *Webb* v. *Whiffin*, L. R. 5 H L 718; *Brett's case*, 6 Ch. 300, 8 Ch. 800, *Morris' case*, 7 Ch. 200, 8 Ch. 450; and Palmer's Company Precedents, 11th Ed. Pt. II, pp. 565—579, generally as to the liability of contributories

past members(*a*). The rule as to liability of *B* contributories has been stated thus: "You will apply all that you can get from the existing members in payment of the existing debts, no matter of what date. If, after you have done that, there remain debts unsatisfied, so that you have to resort to the members who have passed away from the company within a year, then you will be compelled to classify the *residuum* of the debts remaining, and ascertain what part of that *residuum* is to be attributed to past debts; that is, to debts which pre-existed the transfer made by past members and what portion is to be attributed to the new debts which have arisen subsequently to the date of the last transfer. When you have ascertained the proportion which is attributable to debts which existed when the transfers were made,—then, if there have been several transfers within the year, you will be compelled of necessity to sub-divide that portion of the *residuum* into several portions, according as you find that transfers have been made within the past year(*b*)." In the case of a company limited by guarantee, as well as in the case of a company limited by shares, past members who have ceased to be members during the year are not liable until the Court is satisfied that the existing members are unable to satisfy the liabilities of the company(*c*).

No contribution can be required from any member exceeding the amount unpaid on his shares(*d*). Any attempt so to define the constitution of a company that a member shall in an event be liable for a larger sum is in breach of the Statute and is *ultra vires*(*e*).

Where there is a valid and subsisting contract to issue fully paid up shares in consideration of good-will and stock-in-trade sold to the company, the Court will not enquire into the value of the consideration, and the shareholder will not be liable as a contributory(*f*). As pointed out in the notes to section 28, subject to any restrictions imposed by the articles

(*a*) *Taurine Co.* 25 Ch. D. 118.

(*b*) *Per* Lord Westbury in *Webb* v. *Whiffin*, L. R. 5 H. L. 711, 728. See also *Morris' case*, 7 Ch. 200; and *Brett's case*, 6 Ch. 800; 8 Ch. 800; cf. *Sorabji Jamsedtji* v. *Ishwardas Jugjiwandas* I. L. R. 20 Bom. 654; *Bhimbhai* v. *Ishwardas Jugjiwandas*, I. L. R. 18 Bom. 152.

(*c*) *Premier Underwriting Assoc. No. 1*, (1913) 2 Ch. 29.

(*d*) S. 156(1) (*iv*).

(*e*) *Bisgood* v. *Henderson's Transvaal Estates, Ltd.* (1908) 1 Ch. 743, 759.

(*f*) *Pell's case*, 5 Ch. 11.

of association, the right of transfer is free, but whether the articles do or do not contain a clause authorizing the directors to refuse registration, the transferor cannot escape liability as a contributory where he has obtained the advantage of executing and registering his transfer upon an opportunity obtained by him fraudulently or in breach of some duty which he owed the company(*a*).

When a person, whose name has been placed on the list of contributories in a particular character, successfully applies to have his name removed from the list in that character, it is not open to the liquidator on the same application to contend that he is entitled to retain the name of the applicant on the list in another character. The order removing the name of the applicant from the list will be without prejudice to the liquidator's right to put it on again in any other capacity(*b*).

Nature of liability of contributory.

159. (*1*) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

[Sec. 125.]

(*2*) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the Presidency-towns.

Contributories in case of death of member.

160. (*1*) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

[Sec. 126.]

(*2*) If the legal representatives or heirs make default in paying any money ordered to be paid by

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(*a*) *Discoverers Finance Corp* (1910) 1 Ch 312.
(*b*) *Premier Underwriting Assoc* (No 2), (1913) 2 Ch 81.

them, proceedings may be taken for administering the property of the deceased contributory, whether movable or immovable, or both, and of compelling payment thereout of the money due.

Executors of a deceased member when made contributories are liable only in their representative character, and not personally, unless the shares have been transferred into their names at their request(*a*). Executors may execute transfers of shares having the same validity as if they were themselves members(*b*). Notices sent to the registered address of a deceased member are duly served whether they actually reach his legal representatives or not, if the death has not been communicated to the company(*c*).

Contributories in case of insolvency of member.

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

[Sec. 127.]

(*1*) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(*2*) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

This section only applies to "contributories;" it does not apply to "shareholders." Hence, unless the winding up

(*a*) *Buchan's case*, 4 A C 549.
(*b*) S 35.
(*c*) *Tricumdas Mills Co.* v. *Haji Saboo Sidick*, 4 Bom. L. R. 215.

precedes the insolvency the section has no application, since a shareholder does not become a contributory until there is a winding up.

Winding up by Court.

[Sec. 129.] **162.** A company may be wound up by the Court— **Circumstances in which company may be wound up by Court.**

(i) if the company has by special resolution resolved that the company be wound up by the Court:

(ii) if default is made in filing the statutory report or in holding the statutory meeting:

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven:

(v) if the company is unable to pay its debts:

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

This section states the circumstances in which the Court may make an order to wind up a company. Sub-section (v) is explained by the next section. Section 166 states how an application to the Court for a winding up order shall be made and who may make it. Applications under sub-section (i) based upon a special resolution are not usual, as if the company passes a resolution that it shall be wound up, it may resolve that it be wound up voluntarily(*a*). Cases where the Court will find it "just and equitable" to make a winding up order occur where the substratum of the company is gone

(*a*) S. 203(2).

and the company cannot carry on the business for which it was formed(*a*), or where the company is fraudulent in its objects(*b*), or where the chairman of the board of an insolvent company is carrying on business as the only debenture-holder but in the company's name(*c*), or where a complete deadlock in the management of the affairs of the company has arisen(*d*)

A company incorporated in England which carries on business exclusively in India can be wound up by the Indian Courts(*e*).

Company when deemed unable to pay its debts.

[Sec. 130.]

163. A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(*a*) *Amalgamated Syndicates* (1897) 2 Ch 600; *Crown Bank*, 44 Ch D. 634; *Haven Gold Mining Co* 20 Ch D. 151; *Coolgardie Gold Mines*, 76 L. T. 269; *Shah S N. Co.* 10 Bom L. R 107: *Pioneer Bank Ltd* I. L. R. 39 Bom. 16; *Tulsidas Lallubhai v Bharat Khand Cotton Mill Ltd.* I L. R. 39 Bom 47.

(*b*) *Thomas Edward Brinsmead & Sons*, (1897) 1 Ch 406

(*c*) *Clandown Colliery Co.* (1915) 1 Ch 369

(*d*) *Sailing Ship Kentmere Co* 1897, W N., 58 For cases under sub-sec. (vi) see Palmer's Company Precedents, 11th Ed Pt. II, pp. 54—60

(*e*) *Calcutta Jute Mills Co Ld* I L R 5 Cal. 888; cf. *Commercial Bank of India*, 6 Eq. 517, *Matheson Bros Ld* 27 Ch. D. 225, *Commercial Bank of S. Australia*, 33 Ch. D 174.

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

The inability to pay debts is the usual ground for a petition to wind up a company. If the debt is disputed *bonâ fide*, the Court will not enforce it by making a winding up order(*a*). Under sub-section (i) the creditor, assuming a debt is more than Rs 500 may rely upon non-payment of his particular debt for three weeks after giving the statutory notice. But sub section (iii) goes much further than this, and, stated broadly, contemplates insolvency on the part of the company, though a company may be "unable to pay its debts" and yet not be insolvent. A company is not to be considered insolvent merely because it has sustained and is continuing to sustain heavy losses, if its assets more than balance its liabilities(*b*), but on the other hand once a company has gone into liquidation it will be treated as insolvent until it is shown that the assets are sufficient for payment of the debts in full(*c*). Inability on the part of a company to pay its debts may be shown *aliunde* even though the debt of the petitioning creditor be under the amount specified by sub-section (i)(*d*). "It is not a discretionary matter with the Court, when a debt is established and not satisfied, to say whether the company shall be wound up or not: that is to say if there be a valid debt established, valid both at law and in equity One does not like to say positively that no case could occur in which it would be right to refuse it, but ordinarily speaking, it is the duty of the Court to direct a winding up(*e*)"

(*a*) *Gold Hill Mines Co* 23 Ch D 210.

(*b*) *Joint Stock Coal Co* 8 Eq. 146

(*c*) *Milan Tramways Co* 25 Ch. D 587, 591; see Palmer's Company Precedents, 11th Ed. Pt. II, pp 50, 51

(*d*) *Globe Steel Co* 20 Eq 337, *Yate Collieries*, 1883, W N. 171; *Leyton, etc Cycle Co.* 1901, W. N. 225.

(*e*) Lord Cranworth in *Bowes* v *The Hope, etc, Society*, 11 H. L. C, 389; *General Co. for Promotion of Land Credit.* 5 Ch 363, 380; affirmed 5 H. L. 176

The practice in England is not to make an order where the petitioner's debt is less than £ 50 unless there are special circumstances(*a*). as where the company used the practice of the Court to enable them to refuse to pay a debt when they had sufficient assets(*b*), or where the company obviously could never commence business(*a*).

Winding up may be referred to District Court.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subseqeuent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court," within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Transfer of winding up from one District Court to another.

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

Provisions as to applications for winding up

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

[Sec. 137.]

(*a*) *Industrial Insurance Assoc. Ltd.* 1910, W N 245
(*b*) *World Industrial Bank Ltd.* 1909, W N 148

Provided that—

(a) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either where originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *primâ facie* case for winding up has been established to the satisfaction of the Court.

This section states who may petition for the winding up of a company. Applications on behalf of the company are rare, as if the shareholders desire to wind up, a resolution

to wind up voluntarily can be passed and a supervision order obtained subsequently if deemed necessary. Directors who applied on behalf of a company for a winding up order relying upon a clause in the articles which authorised them to take proceedings on behalf of the company, were held to be acting *ultra vires* and liable for costs(*a*).

A creditor who cannot obtain payment of his debt is entitled to an order if he brings his case within the Act(*b*) The Court will, however, have regard to the wishes of the majority in value of the creditors(*c*). An assignee may petition(*d*), and also a secured creditor(*e*) The inclusion by statute of the contingent and prospective creditor has displaced the decisions which laid it down that he could not petition, but in the case of a petition by such a creditor the provisions of sub-section(c) must be borne in mind. The owner of an investment-bond issued by an assurance company, who, upon making periodical payments to the company, will at a future date become entitled to the payment of a certain sum of money, is a contingent or prospective creditor(*f*).

The right of a contributory to petition for the winding up of a company cannot be excluded or limited by the articles of association(*g*). A contributory should make out a special case(*h*); if he petitions on the ground that the company is insolvent or unable to pay its debts, he must show that there are assets of such an amount that he will have a tangible interest(*i*).

Where several petitions for winding up are presented, unless some very special grounds exist, the order will be made upon the petition first presented(*j*).

(*a*) *Smith* v *Duke of Manchester*, 24 Ch. D 611.

(*b*) *London Suburban Bank*, 6 Ch 641, 643 See Palmer's Company Precedents, 11th Ed Pt. II, pp. 68, 69, as to a creditor's petition

(*c*) *Chapel House Colliery Co* 24 Ch. D 259

(*d*) *Paris Skating Rink Co* 5 Ch D 959

(*e*) *Moor* v. *Anglo-Italian Bank*, 10 Ch D 681, *Re Pogose*, 20 Ch. D 289.

(*f*) *British Equitable Bond and Mortgage Corp* (1910) 1 Ch. 574. See Palmer's Company Precedents, 11th Ed Pt II, p 70

(*g*) *Peveril Gold Mines, Ld.* (1898) 1 Ch. 122; cf. *Payne* v *The Cork Co.* (1900) 1 Ch. 308; *Baring Gould and Sharpington Synd.* (1899) 2 Ch. 80.

(*h*) See notes under s. 162, and see Palmer's Company Precedents, 11th Ed Pt. II, pp. 72—76 as to a contributory's petition.

(*i*) *Rica Gold Washing Co.* 11 Ch. D. 36.

(*j*) *In re Bamford Ltd.* (1910) 1 Ir. 390.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

[Sec. 138.]

Effect of winding up order.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

[Sec. 139.]

Commencement of winding up by Court.

This section gives effect to the judgment in *In re Taurin Co.*(a), in which a voluntary winding up was superseded by a winding up order.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

[Sec. 140.]

Court may grant injunction.

This section enables the Court to make an order for the stay of proceedings against the company at any time between the presentation of the petition and the order for winding up upon the application of either a creditor, or contributory. or the company itself Once the winding up order has been made the matter is carried a stage further , and under section 171 no suit or other legal proceeding may be proceeded with or commenced against the company except by the leave of the Court. After a winding up order a creditor who has obtained a decree against the company may not therefore take out execution against the company except with the leave of the Court. "The object of the winding up provisions is to put all unsecured creditors upon an equality and pay them *pari passu*(b)." Though there is no case in which leave

(a) 25 Ch. D. 118.
(b) Lindley L. J. in *Oak Pits Colliery Co.* 21 Ch. D. 329.

has been given to proceed with or put in force an execution against the company after the winding up order has been made(*a*), leave may be obtained where the company is a necessary party to a suit against third parties(*b*), or where it is desirable that the issues should be tried by the ordinary tribunals(*c*), or if the relief sought cannot be obtained in the winding up proceedings(*d*). The sanction of the Court to proceeding with a suit does not include a sanction to execute the decree when passed(*e*)

Once a winding up order has been made an application under section 38 for rectification of the register may only be made if leave has been obtained under section 171(*f*).

There is no special section staying proceedings against a company which is being wound up voluntarily. But under section 207, on a voluntary winding up the assets of the company have to be applied in satisfaction of its liabilities *pari passu*, while section 215 provides that where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to exercise any of the powers which the Court might exercise if the company were being wound up by the Court. The Court will not allow one creditor to seize an undue share of the assets for his own benefit, and a creditor-plaintiff in an action against a company in voluntary liquidation is not entitled to any priority in the winding up for his costs of the suit, he can only add them to his debt(*g*). If, moreover, the creditor has filed a suit unnecessarily after knowledge of the resolution to wind up he may be deprived of his costs(*h*) The difference in regard to staying proceedings between a winding up by the Court and a voluntary liquidation is that in the former the creditor is debarred from proceeding by way of action unless he can show special grounds for granting him leave to do so, in the case of a voluntary liquidation the onus appears to be thrown

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(*a*) Buckley on Companies, 9th Edn pp 333, 334

(*b*) *Marine Investment Co.* 17 L. T. 535

(*c*) *Thurso New Gas Co* 42 Ch D. 491 ; *Rio Grande S. S Co* 5 Ch. D 282

(*d*) *Pacaya Rubber and Produce Co Ld* (1913) 1 Ch 218, 223.

(*e*) *Ishwardas Jagjiwandas* v. *Dhanjisha Nasarvanji*, I. L. R. 16 Bom 644.

(*f*) *Onward Building Soc.* (1891) 2 Q. B 463.

(*g*) *Thurso New Gas Co* 42 Ch. D. 486

(*h*) *East Kent Shipping Co.* 18 L. T. 748 ; *Freeman* v. *General Publishing Co.* (1894) 2 Q B 380 ; *Poole Firebrick Co.* 17 Eq. 268.

on the liquidator of showing that an order should be made staying an action brought against the company(*a*).

In a recent case where the solicitor and a director of the company by means of a trick caused postponement of execution until a resolution for voluntary liquidation had been passed, the Court decided that in the circumstances the execution should proceed(*b*)

When a company is being wound up voluntarily, subject to the supervision of the Court, any attachment or execution put in force without the leave of the Court against the estate or effects of the company after the commencement of the winding up is void under section 232. But notwithstanding the absolute prohibition which section 232 contains, the Court may give leave to execute on the applicant showing a reason for being allowed to do so(*c*). The effect of a supervision order is to give the Court the same powers and jurisdiction over suits as it has in a compulsory winding up, for under section 222 the petition, and under section 225(2) the order for supervision are, respectively, for the purpose of giving it such jurisdiction, to be deemed a petition and order for winding up by the Court.

In the case of companies registered in pursuance of Part VIII of the Act the provisions relating to staying proceedings are to be found in sections 268, 269. The former gives power to the Court, on a creditor's application, to make an order, between the presentation of the petition and the winding up order, restraining proceedings against any contributory of the company. Section 269 prohibits, except with the leave of the Court, suits or proceediegs against a company or any contributory of the company in respect of any debt of the company after a winding up order has been made.

Section 273 contains provisions, in the case of unregistered companies, similar to those relating to companies registered under Part VIII of the Act contained in section 268.

Section 274 contains, in the case of unregistered companies, a prohibition similar to that contained in section 269

(*a*) *Currie* v. *Consolidated Kent Collieries Corp.* (1906) 1 K. B. 134. Cf. *Roundwood Coll Co* (1897) 1 Ch 373; *Venner's Electrical Etc. Ltd.* (1815) 2 Ch 404

(*b*) *Armourduct Manfg. Co.* v. *General Incandescent Co.* (1911) 2 K. B. 143.

(*c*) *Lancashire Cotton Spinning Co.* 35 Ch. D. 656; *Higginshaw Mills and Spinning Co.* (1896) 2 Ch. 544.

against suits or proceedings against any contributory of a company in respect of any debt of the company after a winding up order has been made. This section (274) has been held only to apply to suits brought against contributories of a company as such, to enforce a debt of the company(*a*).

The Court to make the order staying or restraining proceedings will not be that in which the proceedings are being taken, but the Court which has jurisdiction under the Act(*b*). Leave to commence a suit against a company in liquidation should not be given on an *ex parte* application(*c*).

Powers of Court of hearing petition.

170. (*1*) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any *interim* order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

[Sec. 141.]

(*2*) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

A creditor who cannot get payment of his debt is entitled, as between himself and the company, *ex debito justitiae* to an order(*d*), and the view that he would not be entitled to an order if the creditors generally will not be benefited(*e*) did not find favour in a later case(*f*) which also states the

(*a*) *South of France Pottery Works Syndicate*, 37 L T. 260.
(*b*) Sec. 3
(*c*) *Western and Brazilian Telegraph Co* v *Bibby*, 42 L. T. 821.
(*d*) *Bowes* v. *Hope Soc.* 11 H L C 389; *London Suburban Bank*, 6 Ch. 641, 643; *Western of Canada Oil Co* 17 Eq. 1: *Krasnapolsky Restaurant*, (1892) 3 Ch. 174.
(*e*) *Greenwood & Co* (1900) 2 Q. B. 306.
(*f*) *Crigglestone Coal Co.* (1906) 2 Ch 327, 332.

effect of the latter part of sub-sec.(*1*), that it is no defence that there are no assets to wind up, but if the order will be useful (not necessarily fruitful) there is jurisdiction to make it.

The company, its creditors, and contributories alone are entitled to be heard(*a*). The practice as regards costs though the rule is not inflexible, is stated by Lord Justice Buckley to be "to give costs to the petitioner if the petition succeeds, and to the company if it fails, and further to give one set of costs to the contributories, and one to the creditors who support the winning side If the petition succeeds, these costs are given out of the company's estate, if it fails, they are given against the petitioner(*b*)"

171. When a winding up order has been made, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose. **Suit stayed on winding up order.**

[Sec. 142.]

See notes to sec. 169.

172. (*1*) On the making of a winding up order, it shall be the duty of the company forthwith to file with the registrar a copy of the order, and the petitioner in the winding up proceedings may so file a copy. **Copy of winding up order to be filed with registrar.**

[Sec. 143.]

(*2*) On the filing of a copy of a winding up order, the registrar shall make a minute thereof in his books relating to the company, and shall notify in the local official Gazette that such an order has been made.

(*3*) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

(*a*) *Bradford Navigation Co* 5 Ch. 600

(*b*) Buckley on Companies, 9th Edn p. 344 See also *Ibo Investment Trust, Ld* (1904) 1 Ch 26; *Consolidated Exploration Co* (1899) 2 Ch 599; as to costs on appeal, *Consolidated South Rand Mines*, 1909, W. N. 66; (1909) 1 Ch 491; *Ibo Investment Co.* (1903) 2 Ch. 373.

A voluntary winding up is not notice of discharge(*a*), but a compulsory winding up order operates as a wrongful dismissal(*b*). Whether or not a servant discharged by the operation of this section is entitled to compensation will depend upon the terms of his employment(*c*). Where the liquidator carries on the business of the company, and employs the servants of the company, that may be evidence of a new contract between the servants and the liquidator on the same terms as the old contract between the servants and the company(*d*). The section itself lays it down that when the business of the company is continued the order shall not be notice of discharge. How far the third sub-section will affect those persons who are generally termed managing agents of a company cannot be stated in general terms. Due regard will have to be had to the terms of any agreement between them and the company and their position under the articles of association in each particular instance.

Power of Court to stay winding up.

[Sec. 144.]

173. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

In making an order under this section the Court will exercise its discretion. It is not bound by the consent of the creditors but has a duty with regard to the commercial morality of the country. The Court will have regard to the following facts: That directors have not compiled with their statutory duties as to giving information to the official receiver in furnishing a statement as to the affairs of the company, that there has been an undisclosed agreement between the

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(*a*) *Midland Counties District Bank* v *Attwood*, (1905) 1 Ch. 357.

(*b*) *Measures Bros. Ld.* v. *Measures*, (1910) 1 Ch. 336

(*c*) As to compensation see *Hartland* v. *General Exchange Bank*, 14 L T 863; *Yelland's case*, 4 Eq. 350; *Brace* v. *Calder*, (1895) 2 Q. B. 253; *e p. Clark*, 7 Eq. 550; *e. p. Logan*, 9 Eq. 149; *e. p. Maclure*, 5 Ch. 737; *Rhodes* v. *Forwood*, 1 A C. 256; *Ogdens Ltd.* v. *Nelson*, 1905, A. C. 109; *Patent Floor Cloth Co.* 26 L. T. 467; *Shirreff's case*, 14 Eq. 417.

(*d*) *Harding's case*, 3 Eq. 341; cf. *MacDowall's case*, 32 Ch. D. 366.

promoter and the vendor to the company as to the participation by the former in fully paid shares forming the consideration for the purchase of property by the company on its formation ; that the promoter has made gifts of fully paid shares to the directors : that there are other matters connected with the promotion, formation, or failure of the company, or the conduct of its business or affairs, which appear to the Court to require investigation(*a*). The first of the foregoing considerations relates to certain sections in the English Act which have not been reproduced in the Indian Act, but the others will apply equally to companies which come under the latter Statute

Court may have regard to wishes of creditors or contributories.

174. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

[Sec. 145.]

The provisions of section 152 of the English Act, which provide for the first or statutory meeting of the creditors and contributories to be summoned by the official receiver have not been reproduced. For the purpose of ascertaining the wishes of creditors and contributories recourse may be had to section 239, under which the Court may direct meetings to be called and may give directions for the conduct of the meeting. The High Court may, under section 246, make rules enabling the liquidator, subject to its control, to exercise its powers and duties in respect of holding and conducting meetings to ascertain the wishes of creditors and contributories, and section 183 gives power directly to the liquidator to summon such meetings and directs that he shall do so on a requisition in conformity with that section Section 183(5) permits of an application to the Court by any one aggrieved by any act or decision of the liquidator. The words "all matters" make the application of the section very wide, and it is applicable even before the order and when the petition is before his Court(*b*)

(*a*) *Telescriptor Syndicate Ld.* (1903) 2 Ch. 174, citing *in re Hester*, 22 Q B. D. 632 ; *in re Flatau,* (1893) 2 Q. B 219 ; *in re Taylor,* (1901) 1 K. B 744.

(*b*) *Western of Canada Oil Co.* 17 Eq. 1 ; and see Buckley on Companies, 9th Edn. pp. 354-357, where cases in which the question arose of giving weight to the wishes of creditors or contributories are collected and classified, and Palmer's Company Precedents, 11th Ed. Pt. II, pp. 131, 132.

Official Liquidators.

Appointment of official liquidator.

175. (*1*) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons, to be called an official liquidator or official liquidators.

[Sec. 149.]

(*2*) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up.

(*3*) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(*4*) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(*5*) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(*6*) A receiver shall not be appointed of assets in the hands of an official liquidator.

Under the English Statute once the winding up order is made the official receiver becomes *ex officio* provisional liquidator and continues to act as such until a liquidator is appointed. In this Act, which makes no mention of the official receiver, there is no similar provision under which an official of the Court is to be provisional liquidator after the winding up order and is to remain so until other persons are appointed. Under sub-section (*2*) the appointment of a provisional liquidator can only be made before the winding

up order, and once the winding up order is made the Court has the power to appoint an official liquidator only otherwise than provisionally. Pending such appointment the property will be deemed to be in the custody of the Court under section 178(*2*). Under the English practice an appointment before winding up is not often made, except by consent(*a*); the section of the English Act relating to the official receiver avoids any *hiatus* in the office of liquidator once the winding up order has been made. What will be the practice under the Act will depend among other things upon such rules as may be framed under section 246, but it is seemr probable that the provision for the appointment of a provisional liquidator will be more frequently invoked than under the English Act, Lord Justice Buckley states that the official liquidator might under the old practice be appointed at the hearing of the petition, but he was not so appointed except by consent, and the settled practice was in all cases to direct a reference to chambers(*b*).

The powers of the provisional liquidator may be restricted under section 180.

Resignations, removals, filling up vacancies and compensation.

176. (*1*) Any official liquidator may resign or be removed by the Court on due cause shown.

[Sec. 149 (6).]

(*2*) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court.

(*3*) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

The words "on due cause shown" "point to the unfitness of the person—it may be from personal character or from his

(*a*) Palmer's Company Law, 9th Edn p. 392, and see Palmer's Company Precedents, 11th Ed. Pt. II, pp. 158—161.

(*b*) Buckley on Companies, 9th Edn pp. 361, 362, and cases there cited. For Rules, see Appendix.

connection with other parties or from circumstances in which he is mixed up—some unfitness in a wide sense of the term(*a*)". The matter is one of discretion, and the Court of appeal will not readily interfere with an exercise of the discretion according to law(*b*), but will see whether cause has or has not been shown for the removal(*a*). In the case of a voluntary liquidator the remuneration must be considered with regard to its own particular circumstances(*c*), and it is conceived that subject to any rules that may be made the same principles will apply to an official liquidator.

Official liquidator.

177. [Sec. 149 (9).] The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Custody of company's property.

178. (*1*) [Sec. 150.] The official liquidator shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(*2*) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Powers of official liquidator.

179. [Sec. 151.] The official liquidator shall have power, with the sanction of the Court, to do the following things:—

(a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal.

(*a*) *Sir John Moore Co.* 12 Ch D. 325, 331. But see *Adam Eyton Ld.* 36 Ch. D. 299; *Rubber and Produce Investment Trust,* (1915) 1 Ch. 382.

(*b*) *E. p. Sheard,* 16 Ch. D. 107; *Urmston Grange Co.* 17 T. L. R. 553.

(*c*) *Amalgamated Syndicate, Ltd* (1901) 2 Ch 181: cf *Tavistock Ironworks Co.* 24 L. T. 605.

in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same;

(c) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(g) to raise on the security of the assets of the company any money requisite;

(h) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name

any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

The official liquidator of a company is in the position of a receiver or manager of partnership assets appointed by the Court "He should, as the officer of the Court, maintain an even and impartial hand between all the individuals whose interests are involved in the winding up He should have no leaning for or against any individual whatever. It is his duty to the whole body of shareholders, and to the whole body of creditors, and to the court, to make himself thoroughly acquainted with the affairs of the company; and to suppress nothing, and to conceal nothing, which has come to his knowledge in the course of his investigation, which is material to ascertain the exact truth in every case before the court, and it is for the Judge to see that he does his duty in this respect(a)"

"The liquidator's principal duties—speaking generally—are to take possesssion of and protect the assets, to make out the requisite lists of contributories and creditors, to have disputed cases adjudicated upon, to realize the assets...., and to apply the proceeds in payment of the company's debts and liabilities, in due course of administration, and, having done that, to divide the surplus among the contributories,

(a) *Per* James, L. J. in *Gooch's case*, 7 Ch 207, 211

and to adjust their rights(*a*)." It is his duty to find out from the books and papers of the company, and the statement of affairs who are the creditors of the company, and if any creditor omits to put in his claim the liquidator should communicate with him(*b*).

The liquidator stands in a fiduciary position towards the company(*c*) and has been termed a statutory trustee(*d*) and, though in some sense a trustee, is a paid agent, bound to discharge his duties with reasonable care and skill, and may be deprived of costs for a mistake which would not be sufficient to disentitle an ordinary gratuitous trustee(*e*). But an order that an official receiver(*f*) shall pay costs personally is tantamount to a declaration that he has been guilty of misconduct, and if made without evidence to support such a declaration, an appeal will lie(*g*). A liquidator who borrows on the security of the assets of the company may make himself personally liable(*h*).

The section tabulates the statutory powers of the liquidator to be exercised however with the sanction of the Court unless under the section next ensuing the Court orders that he may exercise any of such powers without its sanction(*i*). The section is not exhaustive and sections 181, 183, and 234 must not be overlooked A company in liquidation cannot itself sue, and by the previous section the liquidator may not be described by his individual name. "The X. Y. Z. Co., Ltd., in liquidation, by the official liquidator, plaintiff," is a description which will comply with the Act(*j*) A bankruptcy notice must be in the name of the company, not in the liquidator's own name(*k*). The liquidator may not carry on

(*a*) Palmer's Company Law. 9th Edn. 395.

(*b*) *Pulsford* v. *Devenish*, (1903) 2 Ch. 625

(*c*) *Silkstone and Haigh Moor Coal Co* v. *Edey*, (1900) 1 Ch 167.

(*d*) *Black & Co.* 8 Ch. 254 ; *Oriental Inland Steam Co.* 9 Ch. 557.

(*e*) *Silver Valley Mines*, 21 Ch. D. 381.

(*f*) Under the Companies Consolidation Act, 1908, s. 149 the official receiver may be appointed liquidator and becomes provisional liquidator by virtue of his office on the winding up order being made

(*g*) *Raynes Park Golf Club* (1899), 1 Q. B. 961, doubted in *John Tweddle & Co* (1910) 2 K. B. 697.

(*h*) *Ganges Steam Tug Co.* I. L. R. 18 Cal. 31.

(*i*) For forms of orders under English Statutes, see *Rochdale Property Co.* 12 Ch. D 775 ; *London Quays and Warehouses Co* 3 Ch. 394 ; *Watson & Co* (1891) 2 Ch. 55.

(*j*) *Muhammad Yusuf* v *The Himalaya Bank, Ld.* I. L. R. 18 All. 198, F. B, and, as to litigation and costs of proceedings, see Palmer's Company Precedents, 11th Ed. Pt. II, pp. 314, 315.

(*k*) *In re Winterbottom*, 18 Q. B. D. 446 ; *re Nance* (1893) 1 Q. B. 590.

business for the purpose of reconstruction, and the word "necessary" is to be taken as importing something which may be called a mercantile necessity, which would be highly expedient under all the circumstances of the case for the beneficial winding up of the company(*a*). The power of sale contained in sub-section (c) overrides a private contract against assignment made by the company(*b*).

The powers of a liquidator in a voluntary winding up are stated in section 207 (iv) by reference to the powers of an official liquidator, and where the Court makes a supervision order and appoints an additional liquidator, the latter, under section 224 (*2*), will have the same powers as if he had been appointed by the company.

Discretion of official liquidator.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

[Sec. 151 (4), (5).]

Provision for legal assistance to official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

[Sec. 151 (1), (d).]

The fact that the Court has given its sanction under section 179(a) to legal proceedings does not absolve the liquidator from obtaining sanction under this section for the appointment of an attorney or vakil(*c*). The authority ought

(*a*) *Wreck Recovery and Salvage Co.* 15 Ch. D. 353, and, as to carrying on business, see Palmer's Company Precedents, 11th Ed. Pt. II, pp. 384, 385.

(*b*) *West Hopetown Tea Co.* I. L. R. 12 All. 192

(*c*) *London Metallurgical Co* (1897) 2 Ch. 262.

to name the attorney or vakil to be employed and place a limit upon the costs to be incurred, and after proceedings have begun sanction to the employment of attorney or vakil should only be given in cases of urgency(*a*). It would appear that the liquidator is not justified in obtaining from the Court *ex parte* its sanction to the appointment of a legal practitioner to whom he knows the creditor or contributories object. Where the liquidator obtained sanction *ex parte* to the appointment of a solicitor to whom he knew the committee of inspection, a body not recognised by the Indian Act, objected, the appointment was set aside(*b*).

The latter part of the section codifies the principle enunciated in *Universal Private Telegraph Co.*(*c*). Where, in a voluntary liquidation, the liquidator employs a solicitor in the affairs of the liquidation, he will not be personally liable to the solicitor for costs, but the latter will be entitled to payment out of the assets and in priority to any remuneration that the liquidator might otherwise claim(*d*). When a solicitor has been properly retained on behalf of a company in liquidation his retainer is not revoked by the removal of the particular liquidator who retained him(*e*).

Official books to be kept by liquidator in winding up.

[Sec. 156.]

182. The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Exercise and control of liquidator's powers.

[Sec. 158.]

183. (*1*) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the com-

(*a*) *Ibid*, pp. 269, 271.
(*b*) *Consolidated Diesel Engine Manufacturers, Ld.* (1915) 1 Ch. 192.
(*c*) 23 L. T. 884.
(*d*) *Trueman's Estate*, 14 Eq. 278; *e. p. Watkin*, 1 Ch. D. 130
(*e*) *Reg.* v *Lord Mayor of London*, (1893) 2 Q. B. 146, 149.

pany and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(*2*) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(*3*) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(*4*) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(*5*) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Under this section the liquidator himself may summon meetings of creditors and contributories for the purpose of ascertaining their wishes. The first two sub-sections are analogous to sections 174 and 239, which provide that the Court may have regard to the wishes of creditors or contributories, and may direct meetings to be called for the purpose of ascertaining those wishes. Under section 246(2)(a), the Court may by rules delegate to the liquidator its functions in regard to meetings of creditors and contributories, subject however, to its control In *in re Radford and Bright Ltd.*(a) the Court, under the corresponding sections

(*a*) (1901) 1 Ch. 272, 735.

of the English Act, directed the liquidator to summon a meeting and gave directions for its conduct.

Ordinary Powers of Court.

184. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

[Sec. 163.]

Settlement of list of contributories and application of assets.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

The right to apply under section 38 does not subside with a winding up order and the power of rectification under that section is exercisable whether the company is in liquidation or not(*a*). After rectifying the register the Court may resettle the list of contributories(*b*) and may make the registration retrospective(*a*) The liquidator may only rectify the register with the special leave of the Court(*c*) even if generally empowered by rules made under section 246 to exercise the powers of the Court in that behalf. See notes under section 158 as regards lists of contributories and under section 38 as to rectification of the register.

185. The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay,

[Sec. 164.]

Power to require delivery of property.

(*a*) *Sussex Brick Co* (1904) 1 Ch. 598. applying *Nation's case,* 3 Eq. 77; *Breckenridge's case,* 2 H. & M. 642; *Reese River, etc.* Co. v. *Smith,* L. R. 4 H. L. 64, 80.

(*b*) *Onward Building Soc.* (1891) 2 Q. B. 463.

(*c*) S. 246, *proviso*

pany and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Under this section the liquidator himself may summon meetings of creditors and contributories for the purpose of ascertaining their wishes. The first two sub-sections are analogous to sections 174 and 239, which provide that the Court may have regard to the wishes of creditors or contributories, and may direct meetings to be called for the purpose of ascertaining those wishes. Under section 246(2)(a), the Court may by rules delegate to the liquidator its functions in regard to meetings of creditors and contributories, subject however, to its control. In *in re Radford and Bright Ltd.*(a) the Court, under the corresponding sections

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(*b*) *Onward Building Soc.* (1891) 2 Q. B. 463.

(*c*) S. 246, *proviso*.

deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *primâ facie* entitled.

The object of the section is to prevent the expense of the company bringing actions against the persons named, who are its own contributories or officers, and does not enable orders to be made against other persons(*a*).

The Court may make rules under section 246 enabling the liquidator to exercise the powers conferred upon it by this section. The section does not authorise the Court to deprive an agent of property over which he has a lien under section 221 of the Indian Contract Act(*b*).

Power to order payment of debts by contributory.

186. (*1*) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

[Sec. 165.]

(*2*) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance :

(*a*) *E. p. Hawkins*, 3 Ch. 787.

(*b*) *Chidambaram Chettiar* v. *Tinnevelly Sarangapani Sugar Mills*, I. L. R. 31 Mad. 123 ; cf. *Findlay* v. *Waddell*, 1910, S. C. 670.

Provided that in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

An order made under this or the next section is called a balance order and can be made for calls made before the winding up. The sum payable under the balance order is payable to the liquidator, and though the section provides a summary remedy a suit may be maintained by the company for the amount of the calls(a). The section excludes calls made in the winding up. Under section 187 the Court may make an order for payment of calls on contributories in the winding up.

The only provision for set-off in the case of limited companies is that contained in the proviso to the section, for the previous sub-section deals with set-off in the cases of unlimited companies and of directors or managers of limited companies whose liability is unlimited.

In *in re Whitehouse & Co.*(b) it was decided that the liability of every past and present member to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company(c) is not a debt to the company but a new liability and a liability to contribution to be enforced by the liquidator. The principle is the same whether the unpaid calls are made before or in the winding up. Hence it was held, a contributory cannot set off a debt due to him from the company against calls made against him either by the company before or by the liquidator in the winding up. Though a contributory who is also creditor may not set off his debt against calls(d) nor a dividend which may become due to him against calls, he is entitled upon payment of all calls which have become due, to receive dividends at

(a) *Westmoreland Green and Blue Slate Co.* v. *Feilden,* (1891) 3 Ch. 15; cf. *e. p. Whinney,* 13 Q. B. D. 478.

(b) 9 Ch. D. 595, 600, 601, followed in *Sorabji Jamsetji* v. *Ishwardas Jugjiwandas,* I. L. R. 20 Bom. 654; and in *Vaidiswara Ayyar* v. *Siva Subramania Mudaliar,* I. L. R. 31 Mad. 66, which decided that calls barred by limitation before the winding up order can be recovered.

(c) S. 156.

(d) *Black's case,* 8 Ch. 254; *Law Car and Gen. Insce. Corp.* (1912) 1 Ch. 405, and, generally as to set-off, see Palmer's Company Precedents, 11th Ed. Pt. II, p. 619.

the same time and at the same rate with the other creditors(*a*). But where the company sues for unpaid calls and then goes into liquidation, if the liquidator discontinues the action the contributory will not be allowed to deduct his costs of the suit from any sum recovered by the liquidator on the summons(*b*). The Court will not ordinarily make *ex parte* orders, and only with the greatest caution; leave should be obtained to serve short notice of motion where rapid action is desired(*c*).

Power of Court to make calls.

187. (*1*) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

[Sec. 166.]

(*2*) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

The object of the section is to provide a summary procedure in lieu of proceeding by suit(*d*), but the liquidator cannot sue on a balance order(*e*), and if at the date of the winding up order a suit for calls is pending, it must be abandoned before a balance order can be obtained(*f*) But an action lies by the liquidator against a contributory for moneys

(*a*) *Grissell's case*, 1 Ch. 528; cf. *Auriferous Properties*, (1898) 1 Ch 691; (1898) 2 Ch. 428; *Leeds and Hanley Theatre of Varieties*, (1904) 2 Ch. 45, where two companies were in liquidation, each with claims against the other; cf. *Peruvian Ry. Const. Co.* (1915) 2 Ch. 144, 442

(*b*) *United Serv. Assoc.* (1901) 1 Ch 97.

(*c*) *Ahmedabad Advance Spinning and Weaving Co* v. *Lakshmi Shankar*, 6 Bom L. R. 790.

(*d*) *Re Sandars, e p. Whinney*, 13 Q. B. D 478.

(*e*) *Chalk Webb* v. *Tennant*, 36 W. R. 263; *re Shirley*, 58 L. T. 237: *Westmoreland Green, etc. Co.* v. *Fielden*, 60 L. J. Ch. 301.

(*f*) *Re Colorado Mines Co.* 75 L. T. N. 145.

payable on allotment and for calls made before winding up notwithstanding that he has obtained a balance order in the winding up for payment of the moneys(a).

Making a call is within the discretion of the Court, and the call will not be made if the Court is satisfied that there are sufficient assets in the hands of the liquidators; but it will be made if there are only outstanding assets the realisation of which is doubtful both as to amount and time(b). A call can be made immediately after the making of the winding up order, as "debts and liabilities" must be taken to mean estimated debts and liabilities. A very strong case must be made before the Appellate Court will reduce the amount of the call, and it will not review the discretion of the Court unless that discretion has been improperly exercised(c). The Court may however make an order permitting the liquidator to accept payment of calls by instalments(d).

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof, respectively, to the account of the official liquidator instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

[Sec. 167.]

Power to order payment into bank.

189. All moneys, bills, hundis, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

[Sec. 167 (2).]

Regulation of account with Court.

(a) *Westmoreland Green, etc. Co.* v. *Fielden,* (1891) 3 Ch. 15.
(b) *Helbert* v. *Banner,* L. R. 5 H. L. 28.
(c) *Contract Corporation,* 2 Ch. 95.
(d) *Law Guarantee Trust and Accident Soc.* 26 T. L. R. 565.

Order on contributory conclusive evidence.

190. (*1*) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

[Sec. 168.]

(*2*) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Power to exclude creditors not proving in time.

191. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

[Sec. 169.]

This does not mean that the creditor if he does not prove by the day fixed will be excluded altogether. He may prove as long as there are any assets undistributed(*a*), not disturbing any former dividend(*b*).

Adjustment of rights of contributories.

192. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

[Sec. 170.]

Under this section the Court can adjust the rights of contributories among themselves *quâ* contributories only(*c*). and in so doing reference will have to be made to the articles. It may be that shares have been issued conferring preferential rights as to dividend, or repayment of capital, or both(*d*). But where there is a provision in the articles for preferential dividend and no provision as to division of capital, surplus assets will be divided *pro ratâ* among all the shareholders without reference to the rights of any particular

(*a*) *Hicks* v. *May*, 13 Ch. D. 236; *Kit Hill Tunnel, ex p Williams*, 16 Ch. D. 590

(*b*) *General Rolling Stock Co.* 7 Ch. 646; *Northern Counties Insce. Co.* 17 Ch. D. 336

(*c*) *Alexandra Palace Co.* 23 Ch. D., 297

(*d*) *Andrews* v. *Gas Meter*, (1897) 1 Ch. 361.

class in respect of dividend(*a*). The rule laid down in *e. p. Maude*(*b*) is that if all the shares are of equal nominal value but more has been paid on some than on others, before assets are distributed there must be an equalisation of payments as between the fully paid and the partly paid shareholders. Where the surplus assets were sufficient to repay every member his capital and still leave a surplus it was ordered that the assets ought to be divided among all the shareholders not in proportion to the amounts paid on their shares, but in proportion to the shares held(*c*). Where shares have been issued at a discount or by way of bonus, although such a proceeding is authorised by the articles of association it is *ultra vires*, and the holders will be liable in a winding up to calls for the amounts unpaid on their shares for the adjustment of the right of contributories *inter se*, as well as for the payment of the company's debts and costs of winding up(*d*).

193. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just. **Power to order costs.**

[Sec. 171.]

Costs of suits incurred by the company in liquidation will have to be paid in full(*e*), and costs of unsuccessful litigation incurred by a liquidator, whether in a voluntary or compulsory winding up, are payable to the party entitled

(*a*) *Bridgewater Navigation Co* 14 A C 525; *London India Rubber Co.* 5 Eq 519, cf *Eclipse Gold Mining Co* 17 Eq. 490; *Griffith* v. *Paget*, 5 Ch D 894; 6 Ch. D 511, but see *in re National Telephone Co.* (1914) 1 Ch. 755 See *Ramel Syndicate Ltd* (1911) 1 Ch. 749, as to meaning of surplus assets

(*b*) 6 Ch. 51, cf *Anglesea Coll Co.* 2 Eq 379, 1 Ch. 555; *Provision Merchants Co* 26 L. T. 862.

(*c*) *Birch* v *Cropper*, 14 A C 525, See also *Wakefield Rolling Stock*, (1892) 3 Ch. 165; *Crichton Oil Co* (1902) 2 Ch. 86; *New Transvaal Co.* (1896) 2 Ch 759, *Odessa Waterworks*, (1901) 2 Ch.190*n*; *Ramel Syndicate, Ltd.* (1911) 1 Ch. 749.

(*d*) *Welton* v. *Saffery*, 1897, A. C. 299; cf. *Home and Foreign Investment, etc. Co.* (1912) 1 Ch. 72, and, generally as to adjusting the rights of contributories among themselves, see Palmer's Company Precedents, 11th Ed. Pt. II, p. 627.

(*e*) *International Marine Hydropathic Co.* 28 Ch. D. 471, 473, 480, and *e. p. Smith*, 3 Ch 125, 130.

out of the assets of the company in priority to the costs of the liquidation. This rule applies whether the order simply directs payment of costs, or directs that the costs be paid out of the assets of the company, or that the liquidator do pay the costs with liberty to recoup himself out of the assets(a). A successful litigant who becomes a creditor after the winding up order is *primâ facie* entitled to be paid in full out of the assets and the *onus* is on the liquidator to show that he is not entitled to what *primâ facie* is his right(b).

Dissolution of company.

194. (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

[Sec. 172.]

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

The construction placed upon the words "as soon as the affairs of the company are fully wound up" (Companies Act, 1862, s 142) was that they mean "as far as the liquidators can wind them up," that is, when the liquidator has done all that he can to wind up the company, when he has disposed of the assets as far as he can realise them, got in the calls as far as he can enforce them, and paid the debts as far as he is aware of them, so that he has completed his business as far as he can and is *functus officio*(c).

In the absence of fraud the dissolution was held to be an absolute bar(d) to a suit by a creditor against the late

(a) *Pacific Coast Syndicate, Ltd* (1913) 2 Ch. 26

(b) *London Metallurgical Co* (1895) 1 Ch. 758, and generally as to costs, see Palmer's Company Precedents, 11th Ed Pt. II, pp. 743—749

(c) *Per* James, L. J. in *London and Caledonian Marine Insce. Co.* 11 Ch.D. 140, 143.

(d) *Coxon* v. *Gorst*, (1891) 2 Ch. 73.

directors and the official liquidator of a company seeking to make the directors liable for alleged payment of dividends out of capital while the company was a going concern. But under section 243 of the Act the Court may, within two years upon a proper application, declare the dissolution void.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

195. (*1*) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

[Sec. 174.]

(*2*) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(*3*) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(*4*) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

"The powers conferred by this section are frequently exercised e g. (1) Where the liquidator from an examination of the books and papers of the company, or otherwise, has reason to suspect that there may be some claim unde.

sec. 235—the misfeasance section—; or (2) where he thinks there may be ground for taking proceedings for an action against promoters or others; or (3) where proceedings are pending against the company, and he desires to ascertain whether he can prudently proceed with or defend an action; or (4) when the circumstances in which a person become a member, or ceased to be a member, are material; or (5) where a contributory cannot be found or is in default(*a*)."

An application for an order under this section may be made by the liquidator(*b*) or a contributory(*c*) upon notice to the liquidator to whom the Court may allow the conduct of the proceedings. The Court of appeal will not interfere with the discretion of the judge except in an extreme case, and an order rests upon the discretion of the judge and is not a matter of right as in the case of a subpœna(*d*), but the jurisdiction should only be exercised in very exceptional circumstances. For instance, a person not charged with fraud should not be ordered to be examined in open Court(*e*).

Power to order public examination of promoters, directors, etc.

196. (*1*) When an order has been made for winding up a company by the Court, [Sec. 175.] and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of

(*a*) Palmer's Company Precedents, 11th Ed. Pt. II, pp. 667, 668.
(*b*) *Gold Co.* 12 Ch D 77.
(*c*) *Silkstone and Dodworth Co* 19 Ch D 118, 119
(*d*) *Gold Co.* 12 Ch D 77; *Hargreaves Ld.* (1900) 1 Ch 347; as to whether a person summoned can have his costs, see *T F. Brown & Co.* I. L. R. 14 Cal 219; and *Appleton & Co.* (1905) 1 Ch. 749.
(*e*) *Property Insurance Co.* (1914) 1 Ch. 775.

the company, or as to his conduct and dealings as director, manager or other officer thereof.

(*2*) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(*3*) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(*4*) The Court may put such questions to the person examined as the Court thinks fit.

(*5*) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(*6*) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(*8*) The Court may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Court so directs, and subject to any rules in thi

behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Under the corresponding section of the English Statute (section 175) an order can be made when the official receiver has made a report that in his opinion a fraud has been committed, and the House of Lords has held under the Companies (Winding up) Act, 1890 sec 8, that the Court has no jurisdiction to order any person to be publicly examined unless the official receiver has made a further report containing a finding of fraud(*a*), and this no doubt is the reason for the view that the section only applies, notwithstanding section 193 (corresponding to section 215 of this Act) where the company is being wound up by order of the Court, since it is only in such a case that under the English Act the duty of making a report is thrown upon the official receiver(*b*) This section, which in other respects does not differ from the section of the English Act, substitutes an application by the official liquidator for the further report of the official receiver The alteration is one which does not affect the applicability of the ruling in *e. p Barnes*, and before the Court will make an order under this section there must be a finding by the liquidator of such facts as suggest fraud against the person nominated. This finding will be contained in the application of the liquidator, which the Court will take into consideration and it appears from the section that the liquidator alone is competent to make the application.

The substitution by the Indian Act of the application by the official liquidator for the report of the official receiver, the reference to which in the English Act of itself precludes the corresponding section applying to any but a compulsory winding up, may give rise to discussion of the question whether the section is intended to apply where the winding up is voluntary or under a supervision order. The reference to a winding up order at the commencement of the section does not dispose of the matter, for similar words occur at the

(*a*) *E. p. Barnes*, 1896, A. C. 146.
(*b*) Palmer's Company Precedents, 11th Ed Pt. II, p 679.

commencement of section 195, under a section corresponding to which it was decided in *In re Gold Company*(a) that a contributory might obtain an order in a voluntary winding up. *Heiron's case*(b) decided that a voluntary liquidator could obtain an order where it would be just and beneficial for the purposes of the winding up. It might be contended that the combined effect of section 207 (iv), under which the liquidator appointed by the company in a voluntary winding up may, without the sanction of the Court, exercise all the powers given to the official liquidator in a winding up by the Court, and of section 221, under which a liquidator appointed by the Court when a supervision order has been made may exercise the same powers as if he had been appointed by the company, and of section 215, under which the liquidator in a voluntary winding up may apply to the Court to exercise any of the powers which it might exercise if the company were being wound up by the Court, is to make this section applicable to every form of winding up But on the other hand, though section 225 (2) says that an order for a winding up subject to the supervision of the Court shall for all purposes be deemed to be an order for winding up the company by the Court, a reservation as regards the application of this section is expressly made

The functions and duties of the official receiver, and his liability for costs were considered at length in *In re John Tweddle & Co* (c). It will be a matter for subsequent determination how far the assignment of those functions and duties to the official liquidator by the Indian Act, affects the principles laid down in that case

It has been held that the section was not intended to apply to a case where charges are brought against the company of having committed frauds in the course of its business, and not connected with the promotion or formation of a company(d), but this view is questioned by Sir Francis Palmer on the ground that the section contemplates two classes of cases-- (1) fraud in the promotion or

(a) 12 Ch D. 77.
(b) 15 Ch. D 139.
(c) (1910) 2 K. B 697, followed in *Arthur Williams & Co.* (1913) 2 K. B. 88.
(d) *Per* Vaughan Williams, J. in *Medical Battery Co* (1894) 1 Ch. 444, 447.

formation of a company; (2) fraud committed by any director or other officer of the company in relation to the company since its formation(*a*). The mere fact that proceedings by shareholders are pending against the person ordered to be examined is no reason why he should refuse to answer(*b*).

Power to arrest absconding contributory

197. The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

[Sec. 176.]

Saving of other proceedings.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

[Sec. 177.]

The liquidator may bring suits for the recovery of calls in liquidation, and such suits may be entertained by Subordinate Courts having jurisdiction; section 215 is no bar to such a suit(*c*).

Enforcement of and Appeal from Orders.

Power to enforce orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

[Sec. 178.]

(*a*) Palmer's Company Precedents, 11th Ed Pt. II, p. 679.
(*b*) *Reliance Taxi-Cab Co* 28 T L R 529
(*c*) *Bai Chanchal* v. *Laxmi Dyeing, etc Co* 9 Bom L R. 825

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

[Sec. 180(2).]

Order made in any Court to be enforced by other Courts.

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

[Sec. 180(3).]

Mode of dealing with orders to be enforced by other Courts.

202. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

[Sec. 181.]

Appeals from orders.

The special period of limitation for appeals against orders made in the winding up of companies imposed by sec. 169 of the Indian Companies Act, 1882, has been abrogated by this section, under which both the conditions of appeals and the period within which an appeal must be preferred are governed by the general law. In other respects this section is the same as the repealed section. Contributories

may appeal(*a*) and so may a liquidator but he should first obtain leave from the Judge of the Court to whose directions he is subject, so as to secure himself as regards costs(*b*) The company may appeal(*c*), *e.g.*, where an order for winding up has been made on the ground that it cannot pay its debts. But in such a case as a general rule it will be ordered to give security for costs(*d*) An official liquidator should apply to the Court for leave; his position as regards costs was considered at length in *In re Silver Valley Mines*(*e*). In a case decided under sec. 169 of the Act of 1882, it was held that the right of appeal conferred thereby extended to all orders or decisions made or given in the matter of the winding up of a company, whether the winding up be compulsory, voluntary or under supervision(*f*), while in another case it was decided that the section is not intended to refer to a case in which a Judge upon the discovery of fresh matter considers it expedient to pass a fresh order or to review an order passed by him(*g*).

Voluntary winding up.

Circumstances in which company may be wound up voluntarily.

[Sec. 182.]

203. A Company may be wound up voluntarily—

(*1*) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(*2*) if the company resolves by special resolution that the company be wound up voluntarily;

(*a*) *Silkstone Fall Colliery Co* 1 Ch D 38
(*b*) *City and Country Investment Co* 13 Ch. D 475, 483
(*c*) *Diamond Fuel Co.* 13 Ch D 400.
(*d*) *Photographic Artists' Co.-op. Supply Assoc* 23 Ch. D. 370
(*e*) 21 Ch. D. 381, followed in *Raynes Park Golf Club, Ld* (1893) 1 Q. B. 961; but see *John Tweddle No.* (1910) 2 K. B. 697.
(*f*) *Kesavaloo Naidu* v. *Murugappa Mudali*, I. L. R. 30 Mad 22
(*g*) *Mussoorie Bank, Ld.* v. *Himalaya Bank, Ld* I. L. R. 16 All. 53

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

A special resolution is that described in section 81(2) and it will have to be passed and confirmed as laid down by that section. Where delay is undesirable the company can decide upon a voluntary winding up by one. an extraordinary resolution(*a*), to the effect stated in sub-section (3) Where the latter course is to be adopted the notice must be carefully worded to indicate that it is proposed to pass a final resolution(*b*). A resolution to wind up voluntarily, passed at a meeting held upon notice issued by the secretary without the authority of a resolution of the board of directors, will be ineffectual(*c*). If notice is given of a resolution for winding up for the purpose of reconstruction and a simple winding up resolution is passed, the Court will hold that there is no valid winding up in existence The resolution must be that of which notice is given(*d*).

Commencement of voluntary winding up

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

[Sec. 183.]

Where a compulsory order was made and a provisional liquidator appointed, the Court directed that if a resolution to wind up voluntarily which had already been passed was confirmed, a supervision order should be drawn up in place of the compulsory order. The winding up was ordered to be treated as having commenced at the date of the subsequent confirmatory resolution, and not at the date of the appointment of a provisional liquidator(*e*).

(*a*) S. 81(1).
(*b*) *Bridport Old Brewery Co.* 2 Ch. 191 ; see also notes under s. 81, and *Silkstone Fall Colliery Co.* 1 Ch. D. 38, where the notice was invalid.
(*c*) *Haycraft Gold Reduction, etc. Co.* (1900) 2 Ch. 230 ; *State of Wyoming Syndicate*, (1901) 2 Ch. 431.
(*d*) *Teede & Bishop Ld.* 1901, W. N. 52, cf. *Gutta Percha Corp* (1900) 2 Ch. 665, 670, where the voluntary winding up proved abortive and the Court made a compulsory winding up order.
(*e*) *Emperor Life Hos. Ass.* 31 Ch. D. 78.

When the resolution is under sec. 203 (2), and therefore special, the winding up will date from the confirmatory resolution(a), and this is so where a voluntary winding up is ordered to be continued subject to the supervision of the Court(b) If a resolution to wind up voluntarily is superseded by a compulsory order the winding up commences with the presentation of the petition for the winding up by the Court(c).

Effect of voluntary winding up on status of company.

205. [Sec. 184.] When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

See notes under s. 179 as to carrying on business for the beneficial winding up of the company.

Notice of resolution to wind up voluntarily.

206. (1) [Sec. 185.] Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every

(a) *Dawes' case*, 6 Eq. 232; *Weston's case*, 4 Ch. 20; *Hornby's case*, 16 W. R. 1164.
(b) *Weston's case*, 4 Ch. 20
(c) *Taurine Co* 25 Ch. D. 118, 140; *Russell Hunting Record Co.* (1910) 2 Ch. 78; and s. 168 of the Act

officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

207. The following consequences shall ensue on the voluntary winding up of a company:— **Consequences of voluntarily winding up.**

[Sec. 186.]

(i) the assets of the company shall be applied in satisfaction of its liabilities *pari passu* and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company;

(ii) the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them;

(iii) on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;

(iv) the liquidator may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator in a winding up by the Court;

(v) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;

(vi) the list of contributories shall be *primâ facie* evidence of the liability of the persons named therein to be contributories;

(vii) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two;

(viii) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator; and

(ix) the Court may, on cause shown, remove a liquidator, and appoint another liquidator.

Sub-sec. (i) "The object of the winding up provisions is to put all unsecured creditors upon an equality and pay them *pari passu*(a)." The word 'assets' includes unpaid capital recoverable from contributories(b) and a liquidator who neglects his statutory duty to creditors may be made liable in damages(c). There is no direct decision upon the point whether in a voluntary winding up the liquidator is entitled to pay statute-barred debts. A liquidator took out a summons to determine the point. He was directed to apply the assets "in a due course of administration," the shareholders contending that he was not at liberty to pay statute-barred debts. He then paid certain statute-barred creditors, and upon a shareholders' summons issued to determine whether the payment was proper, it was held that having regard to the shareholders' objection formally taken on the first summons, and to the order made thereon, the payment to the statute-barred creditors was improper(d).

(a) Lindley L. J. in *Oak Pits Colliery Co.* 21 Ch. D. 329.
(b) *Webb* v. *Whiffin*, L. R. 5 H. L 711, 724, 725; *Morris' case*, 7 Ch. 200, 204; and see notes to s. 181.
(c) *Pulsford* v. *Devenish*, (1903) 2 Ch. 625, following dictum of James, L. J in *London and Calidonian Marine Insce. Co.* 11 Ch. D 140.
(d) *Fleetwood and District Electric, etc. Synd* (1915) 1 Ch. 486.

As to distribution of surplus assets, see notes to sec. 192.

It is now settled that as soon as a resolution for a voluntary winding up has been passed it is competent for the company without notice to proceed to appoint a liquidator(*a*). In the case of a winding up by special resolution, the appointment of a liquidator made at the first meeting must be confirmed(*b*). **Sub-sec. (ii).**

The remuneration of the liquidator must be considered in each case with regard to its own particular circumstances(*c*). and where the winding up resolution proves to be invalid the liquidator will not be entitled to be paid anything for services rendered as liquidator(*d*).

The sanction to the continuance of the powers of directors may be given at any time before final dissolution(*e*). **Sub-sec. (iii).**

This gives the liquidator very wide powers in addition to those conferred by this section. Those of an official liquidator will be found in sections 179, 181, 183, and 234. A voluntary liquidator may make appliactions under section 185 for delivery up of books(*f*); he may apply for a summons under section 195(*g*), and he may apply for stay of proceedings against the Company(*h*), but the onus of showing that a stay should be ordered is thrown on him(*i*). Under section 216 he has the power to call general meetings of the company. The general power to apply is given by sec. 215 under which the Court may exercise any power which it might exercise if the company were being wound up by the Court. Sections 153, 212 and 234, which relate to compromises and arrangements with creditors are also to be borne in mind. The general effect of the section, and in particular of this sub-section is to enable the liquidator in a voluntary winding up to conduct the entire liquidation, but if circumstances require it, to ask for the advice, protection, or assistance, of the **Sub sec. (iv).**

(*a*) *Trench Tubeless Tyre Co.* (1900) 1 Ch. 408.
(*b*) *Indian Zoedone Co.* 26 Ch. D. 70.
(*c*) *Amalgamated Syndicates, Ld.* (1901) 2 Ch 181.
(*d*) *Allison Johnson and Foster, Ld. e. p. Birkenshaw,* (1904) 2 K. B 327; the liquidator may, however, be able to recover *aliunde*
(*e*) *Ladd's case,* (1893) 3 Ch. 450.
(*f*) *Findlay* v. *Waddell,* 1910, S. C. 670.
(*g*) *Heiron's case,* 15 Ch. D. 139.
(*h*) *Poole Firebrick Co.* 17 Eq. 268; *Currie* v. *Consolidated Kent Collieries Corp.* (1906) 1 K. B. 134.
(*i*) *Currie* v. *Consolidated Kent Collieries Corp.* (1906) 1 K. B. 134

Court. A liquidator in a voluntary winding up is not, strictly speaking, a trustee either for the creditors or the contributories of a company in liquidation(*a*) nor an officer of the Court(*b*), his position being that of an agent of the company(*a*), but if he neglects his statutory duties to creditors and contributories he may be made liable in damages(*c*).

The powers of the Court of settling a list of contributories are to be found in section 184.

Sub-sec. (v) But in order to enforce calls the liquidator in a voluntary winding up must either file a suit or apply under section 215. The list of contributories is only *primâ facie* evidence of liability, and the liquidator has no power similar to that vested in the Court by section 190 to make an order, conclusive, though subject to appeal, for payment of a call. The liquidator may apply for an order for payment of a call made before the commencement of the winding up(*d*). Whether a liquidator in a voluntary winding up has power to rectify the register without applying to the Court is not clear, but the better opinion appears to be that he has not(*e*).

Sub-sec (viii) Where the validity of the appointment of the liquidator is questioned an order may be made confirming the appointment(*f*).

Sub-sec. (ix). This sub-section has been construed as enabling the Court "on cause shown" to appoint a liquidator, not only on removing one from office, but in any other case in which due cause is shown for the Court's interference, *e.g.*, when an additional liquidator is required(*g*). As regards removal these words point to some unfitness of the person(*h*), but they do not confine the jurisdiction of the Court to such cases, and even if personal unfitness be not shown the Court may remove a liquidator if, on the evidence, it is satisfied that it is for the general advantage of those interested in the assets

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(*a*) *Knowles* v. *Scott*, (1891) 1 Ch. 717.

(*b*) *Hill's Waterfall Estate, etc. Co.* (1896) 1 Ch. 947, 954.

(*c*) *Pulsford* v. *Devenish*, (1903) 2 Ch. 625, see also *Black & Co.'s case*, 8 Ch. 254 ; *Oriental Inland Steam Co.* 9 Ch. 557 ; *London and Caledonian Marine Insce. Co.* 11 Ch. D. 140 ; *Argylls Ld.* v. *Coxeter*, 29 T. L. R. 355

(*d*) *Hiram Maxim Co. Ld.* (1903) 1 Ch. 70.

(*e*) Lindley on Companies, 6th Edn. 1038 ; Buckley on Companies, 9th Edn. 425.

(*f*) *Indian Zoedone Co.* 26 Ch. D. 70.

(*g*) *Sunlight Incandescent Gas Co.* (1900) 2 Ch. 728.

(*h*) *Sir John Moore Co.* 12 Ch. D. 325, 331.

of the company that he should be removed(*a*). Where the circumstances satisfy the Court that it would be in the best interest of all concerned, it will direct the appointment of a new liquidator of the company(*b*).

Notice by liquidator of his appointment.

208. (*1*) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed.

[Sec. 187.]

(*2*) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Rights of creditors in a voluntary winding up.

209. (*1*) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty-one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the local official *Gazette* and once at least in some newspaper (if any) circulating in the district where the registered office or principal place of business of the company was situate.

[Sec. 188.]

(*2*) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors

(*a*) *Adam Eyton, Ld* 36 Ch D. 299.
(*b*) *Baron Cigarette Machine Co* 28 T. L R. 394; cf. *Amalgamated Properties of Rhodesia, Ld.* 30 T. L. R. 405.

so resolve, an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting:

Provided that the Court may, by order at any time, extend the time for making an application under this sub-section for such period as the Court thinks proper.

(3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or such other order as, having regard to the interests of the creditors and contributories of the company may seem just.

(4) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator

210. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

[Sec. 189.]

(2) For that purpose a general meeting may be called by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

211. (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

[Sec. 190.]

Delegation of authority to appoint liquidators.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

212. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

[Sec. 191.]

Arrangement when binding on creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

213. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator

[Sec. 192.]

Power for liquidators to accept shares, etc., as a consideration for sale of property of company.

of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(*2*) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided.

(*4*) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(*5*) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for

winding up the company, or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

A winding up may be decided upon for the purpose of reconstruction or amalgamation, in which event the liquidator may dispose of the property of the company under this section. But neither "reconstruction" nor "amalgamation" has any definite legal meaning. Each word is a commercial and not a legal term, and even as a commercial term has no exact meaning. Where an undertaking is being carried on by a company, and is in substance preserved and transferred to another company consisting substantially of the same shareholders, that is a reconstruction Where there is a blending of substantially two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which holds the blended undertakings that is an amalgamation It is not necessary that a resolution for winding up should refer to "reconstruction" or "amalgamation" in order to constitute "a winding up for the purpose of reconstruction or amalgamation" (*e.g.*, in cases where certain rights accrue under the memorandum or articles of association in such an event), but the purpose of the winding up may be gathered from the whole of the circumstances which result in reconstruction or amalgamation(*a*). It was held under section 161 of the Companies Act, 1862, that a sale to a foreign company was not *ultra vires*(*b*), but according to a recent case decided under section 192 of the Companies (Consolidation) Act, 1908, the effect of the interpretation clause is that both the transferor and transferee companies must be companies formed and registered under the Act of 1908, or under the Joint Stock Companies Acts, or under the Companies Act, 1862, and that a sale to a company domiciled abroad would be *ultra vires* a company registered under the English Act(*c*).

(*a*) *South African Supply, etc. Co.* (1904) 2 Ch. 268.
(*b*) In re *Irrigation Co. of France*, 6 Ch. 176.
(*c*) *Thomas* v. *United Butter Companies of France, Ld.* (1909) 2 Ch. 484.

A recent decision of the Court of appeal lays it down that it is no part of the function of the memorandum of association to define under the corporate objects the distribution of the assets of the company in a winding up. Hence, the provisions of the section cannot be excluded by any clauses in the memorandum and articles of association and a scheme for the sale and distribution of the company's assets and undertaking cannot be made under such clauses without regard to this section(*a*), but Sir Francis Palmer questions the soundness of the principle of the decision in this case(*b*). This section only enables the general meeting to decide on the nature of the consideration to be accepted and not on the mode of its distribution, which must be in accordance with the legal rights of the members of the company(*c*). Where the notice of dissent sent under sub-section (*3*) is irregular the liquidator can waive the irregularity(*d*). The executors of a deceased member of a company who have not had his shares registered in their own names have the same right to dissent, and to restrain the liquidator from carrying out the scheme without purchasing the shares as the deceased member would have had if living(*e*).

Mode of determining price.

214. (*1*) The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration.

(*2*) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section

(*a*) *Bisgood* v. *Henderson's Transvaal Estates*, (1908) 1 Ch 743, applied in *Etheridge* v. *Central Uruguay Rail Co* (1913) 1 Ch. 425

(*b*) Palmer's Company Precedents, 11th Ed. Pt. I, p 1455.

(*c*) *Griffith* v. *Paget*, 5 Ch D 894 : 6 Ch. D. 515 ; cf. *General Motor Cab Co.* (1913) 1 Ch. 377

(*d*) *Brailey* v *Rhodesia Consolidated, Ld.* (1910) 2 Ch. 95 ; *Fleming Spinning & Weaving Co.* I .L. R. 7 Bom. 494 ; as to the form of notice of dissent, see *Motiram Bhagubhai* v. *The Gordon Mills, Ld.* I. L. R. 12 Bom. 526 and *Demerara Rubber Co.* (1913) 1 Ch 331.

(*e*) *Llewellyn* v *Kasintoe Rubber Estates, Ld* (1914) 2 Ch. 670

215. (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

[Sec. 193.]

Power to apply to Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just.

An application under this section must be by either the liquidator, or a contributory, or a creditor(*a*).

The object of the Act is that a company and its creditors should be left, if possible, to settle their affairs without coming to the Court at all, but to provide them with the means of access to the Court whenever any question arises in the course of the voluntary winding up just in the same way as when any question arises in the case of a compulsory winding up or under supervision(*b*). The Court has all the powers which it would have in a case where it was itself winding up the company(*c*). The words "just and beneficial" mean just and beneficial for the purposes of the winding up, and unless an order is based upon such ground it will be open to review upon appeal(*d*). Whether this section can be used for the purpose of setting aside a contract between the company and third parties is doubtful, but if the Court has such a jurisdiction it is discretionary(*e*). As to applications by the liquidator, see notes under section 207(*f*).

(*a*) *New de Kaap, Ld.*, (1980) 1 Ch. 589.
(*b*) *Rance's case*, 6 Ch. 104, 115.
(*c*) *Black & Co.'s case*, 8 Ch. 254, 263
(*d*) *Heiron's case*, 15 Ch. D. 139
(*e*) *Centrifugal Butter Co.* (1913) 1 Ch. 188.
(*f*) See *Alliance Soc.* 28 Ch. D. 559 for an instance of an application by the liquidator for the direction of the Court.

Power of liquidator to call general meeting.

216. (*1*) Where a company is being wound up voluntarily, the liquidator may, from time to time, summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

[Sec. 194.]

(*2*) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and the position of the liquidation.

Final meeting and dissolution

217. (*1*) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of: and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

[Sec. 195.]

(*2*) The meeting shall be called by advertisement, specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in section 206.

(*3*) Within one week after the meeting, the liquidator shall file with the registrar a return of the holding of the meeting, and of its date, and in default of so doing, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(*4*) The registrar on the filing of the return shall forthwith register it, and on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(*5*) It shall be the duty of the person on whose application an order of the Court under sub-section (*4*) is made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

The words "fully wound up" mean when the liquidator has done all he can to wind up the company, when he has disposed of the assets as far as he can realise them, got in the calls as far as he can enforce them, and paid the debts as far as he is aware of them, and has done all that he can do in winding up the affairs, so that he has completed his business as far as he can(*a*). Where the business of a company in liquidation is transferred to a purchaser its final dissolution may not be possible so long as its continued existence is necessary to give effect to its contractual obligations towards the purchaser(*b*). A lease to a company for a term of years determines if the company is dissolved without having assigned the lease(*c*). After dissolution the winding up cannot be re-opened in the absence of fraud(*d*), though under section 243 the Court has power on an application made within two years by the liquidator or other person interested, to declare the des-

(*a*) *London and Caledonian Mar. Inscc. Co* 11 Ch D. 140; cf. *Ram Chandra Rau* v *Kandasami Chetti*, I. L. R. 18 Mad. 498.

(*b*) *Tolhurst* v. *Assoc. Portland Cement Manfs.* (1902) 2 K. B. 660, 678.

(*c*) *Hastings Corp.* v. *Letton*, (1908) 1 K. B. 378.

(*d*) *London and Caledonian Mar. Insce. Co.* (q. v. s.); *Coxon* v. *Gorst*, (1891) 2 Ch. 73; see also *Pinto Silver Mining Co.* 8 Ch. D. 273.

solution void, and may even before the expiration of the three months (sub-section 4) stay all proceedings and keep the company on foot notwithstanding the expiration of the three months(*a*).

Costs of voluntary liquidation.

218. All costs, charges, and expenses properly incurred in the voluntary winding up of a company including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding up.

[Sec. 196.]

The effect of this section is that costs incurred by the liquidator which he has been ordered to pay out of the assets will come before costs of the winding up, and both will have priority over all other claims, being claims at the date of the winding up(*b*). See notes under s. 193.

Saving for rights of creditors and contributories.

219. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up

[Sec. 197.]

This section and section 221 give further protection to creditors and contributories, in addition to their right to apply under section 215, in the notes to which it has been pointed out that even in a voluntary winding up the Court may exercise the same powers as it may exercise in a compulsory winding up.

The Court will interfere where the resolution to wind up voluntarily has been passed fraudulently, and where the proceedings connected with the winding up are attended with suspicion. But this is not exhaustive The Court will

(*a*) *Eastern Investment Co.* (1905) 1 Ch 352.

(*b*) *Home Investment Soc.* 14 Ch. D. 167; *Dominion of Canada Plumbago Co.* 27 Ch. D 33; *London Metallurgical Co* (1895) 1 Ch 758; *Pacific Coast Syndicate Ld.* (1913) 2 Ch. 26.

also make a compulsory order where a voluntary winding up resolution has been passed with a view to reconstruction but such scheme has proved abortive(*a*). A creditor who desires that the Court shall make a compulsory winding up order, when there is a voluntary winding up, must make out a case for an investigation of the company's affairs by the Court, and that his rights will be prejudiced by the voluntary winding up(*b*).

But this principle does not apply where the general body of creditors desire a compulsory order, for this section does not override sections 174 and 223(*c*). A compulsory order was made in supersession of a voluntary winding up where the methods by which the business was conducted and the dealing between the vendor and the company required the fuller investigation and the vendor had been appointed liquidator in the voluntary winding up(*d*).

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

[Sec. 198.]

Power of Court to adopt proceedings of voluntary winding up.

A compulsory winding up order, even if does not provide for the adoption of the proceedings in the voluntary winding up, does not invalidate what has been done in the latter(*e*)

Winding up subject to supervision of Court.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue,

[Sec. 199.]

Power to order winding up subject to supervision.

(*a*) *Haycraft Gold Co.* (1900) 2 Ch. 230; *Gutta Percha Corp.* (1900) 2 Ch. 665.

(*b*) *Russell Cordner & Co.* (1891) 3 Ch. 171; cf *Varieties Ltd.* (1893) 2 Ch. 235; *Medical Battery Co.* (1894) 1 Ch. 444, 448

(*c*) *E. p, Bishop & Sons, Ltd.* (1900) 2 Ch. 254, see Palmer's Company Precedents, 11th Ed., Pt. II, pp. 61, 62.

(*d*) *Peruvian Amazon Co.* 29 T. L. R. 384.

(*e*) *Thomas* v. *Patent Lionite Co.* 17 Ch. D. 250.

but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

An order under this section is commonly known as a "supervision order." It orders that the voluntary winding up shall continue, and therefore the winding up still dates from the passing of the resolution with which the voluntary winding up commenced. The Court will have regard to the wishes of the creditors or contributories(*a*) in exercising its discretion as to whether to make a supervision or compulsory order or no order at all, but as a general rule, a shareholder cannot obtain a supervision or compulsory order after a resolution has been passed for a voluntary winding up(*b*).

A petition for a supervision order when presented by a voluntary liquidator is presented under section 166 in the company's name(*c*), and to give the Court jurisdiction to make the order there must be a valid voluntary winding up to be continued(*d*).

Effect of petition for winding up subject to supervision

222. [Sec. 200.] A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

This refers to the powers of the Court specified in sections 169, 171.

Court may have regard to wishes of creditors and contributories.

223. [Sec. 201.] The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters

(*a*) Ss. 174, 223.

(*b*) *Gold Co.* 11 Ch. D. 701. See Buckley on Companies, 9th Edn. pp. 448-450, where cases in which the principles of this and of s. 223 have been considered are collected and classified; cf. ***Kesavaloo Naidu* v. *Murugappa Naidu*,** I. L. R. 30 Mad. 22.

(*c*) Palmer's Company Precedents, 11th Ed., Pt. II, p. 125.

(*d*) *Caloric Co.* 52 L. T. 589; *Sheffield Mortgage Co.* 1887, W. N. 218; see Palmer's Company Precedents, 11th Ed., Pt. II, pp. 121—132.

relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

See notes under secs. 174 and 221.

224. (*1*) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator. **Power for Court to appoint or remove liquidators.**

[Sec. 202.]

(*2*) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(*3*) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

The powers of a liquidator appointed by the Court under this section are those of a liquidator appointed by the company under section 207(*ii*) which are defined in section 207(*iv*) (*v*) by reference to the powers of the Court and of an official liquidator appointed in a compulsory winding up by the Court. The powers of the latter are found in sections 179, 181, 183. A liquidator appointed under this section will also be subject to removal. Though the words "on cause shown" do not occur in sub-sec. (*3*) the concluding sentence of sub-sec. (*2*) and the existence of these words in section 207 (ix) may have the same effect as if they had been here inserted. The provisions of sections 209, 210(*2*), 213, 215, 216, 217, 234, 235, and 237 will also apply to him.

225. (*1*) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in **Effect of supervision order.**

[Sec. 203.]

the same manner as if the company were being wound up altogether voluntarily.

(*2*) Except as provided in sub-section (*1*), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(*3*) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Forms of orders imposing restrictions are to be found in the cases noted(*a*). Where there are no restrictions the liquidator will be entitled to enter into such arrangements without the sanction of the Court as he would be entitled to enter into in a voluntary winding up(*b*).

Appointment in certain cases of voluntary liquidators to office of official liquidators.

226. [Sec. 204.] Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either

(*a*) *London Quays and Warehouses Co.* 3 Ch. 394 ; *Rochdale Property Co.* 12 Ch. D. 775 ; *Watson & Sons*, (1891) 2 Ch. 55.
(*b*) *Anglo-Romano Water Co.* 5 Ch. 437.

with or without the addition of any other person, to be official liquidator in the winding up by the Court.

If a voluntary winding up is succeeded by a compulsory order, the winding up will date from the presentation of the petition(a).

Supplemental Provisions

227. (1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

[Sec. 205.]

Avoidance of transfers, etc., after commencement of winding up.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Before a resolution for voluntary winding up has been passed shares may be transferred even though the transferors know that the company is on the eve of being wound up voluntarily(b). This applies also to transfers between the preliminary and confirmatory resolutions(c). Where such transfers have been registered before the commencement of the winding up they will be complete, but where this is not so, the liquidator under this section may register, as his power to sanction a transfer of shares involves the power to alter the register of members(d). In one case the Court rectified the register *nunc pro tunc*, but that was done under section 38(e). In the case of a sale and transfer of shares after a

(a) *Taurine Co.* 25 Ch. D. 118.
(b) *Ib.*
(c) *Hornby's case*, 19 L. T. 237.
(d) *National Bank of Wales*, (1897) 1 Ch. 298.
(e) *Sussex Brick Co.* (1904) 1 Ch. 598.

supervision or compulsory winding up order, the transferee is not entitled to be registered as owner without the sanction of the Court, and though the Court has power to order the rectification of the register by the insertion of the transferee's name, such an order will only be made upon strong grounds(*a*).

The Court will confirm *bonâ fide* dispositions of property of a company in the ordinary course of its trade, made after the presentation of a petition for winding up, and completed before the winding up order. Where however such dispositions are incomplete, and rest in contract at the time of the winding up order, the Court has no discretionary power to order the contract to be fulfilled, and the person with whom it was entered into, though he has paid his money, has only a general claim as a creditor for damages in respect of the breach of contract(*b*). But the Court will not recognise payments to creditors after commencement of a winding up of which the creditor has notice(*c*). Directors may be held personally liable for payments improperly made after presentation of a winding up petition(*d*).

Debts of all descriptions to be proved.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

[Sec. 206.]

Under this and the ensuing section (which relates to insolvent companies) the range of proof is extremely wide, the only exception being a liability declared by an order of

(*a*) *Onward Building Soc.* (1891) 2 Q. B. 463.
(*b*) *Wiltshire Iron Co.* 3 Ch. 443 ; cf. *Oriental Bank*, 28 Ch. D. 634.
(*c*) *Civil Service Stores*, 57 L. J. Ch. 119 ; see also *National Bank's case* (Eur. Arb.), L. T. 92 ; *Brown and Tylden's case* (Eur. Arb.), L. T. 163.
(*d*) *Neath Harbour Works*, 1887, W. N. 87, 121 : *Civil Service Stores* (q. v. s.)

Court to be incapable of being fairly estimated(*a*). Claims accruing during the winding up, *e.g.*, on a fire-policy(*b*), and claims by discharged servants of the company(*c*) are entitled to proof. A claim which is admissible as a contingent claim is admissible to proof, and such a proof is not a proof for anything payable *in præsenti*, but it is admissible as a proof for something which may ripen into a right to present payment(*d*). Where the company is lessee or assignee of a lease of immoveable property questions of difficulty may arise depending upon the value of the lease as an asset. The rights of the lessor of proof or claim will depend upon whether the liquidator will or will not surrender the lease and whether the lessor will or will not accept a surrender(*e*). A company was lessee of land for a term of fourteen years, with a power to determine the lease at the end of seven years on payment of rent and performing the covenants up to such date. The winding up took place before the end of seven years and the lessor was unwilling to accept a surrender. It was held that the lessor was entitled to claim for the whole of the future rent to the end of the fourteen years and to prove for breaches of covenant which had already taken place(*f*). In another case(*g*) the lessor was willing to accept a surrender on proof being admitted of the loss he had sustained by the lease being determined. The measure of damages will be the difference between the rent to be paid under the lease and what the landlord will be able to get for the properties(*h*). As regards damages for breach of contract the general rule is that the plaintiff is entitled to be put in the same position as if the breach had not taken place. In the case of the sale of goods

(*a*) *Hardy* v. *Fothergill*, 13 A. C. 351. For instances of debts provable see Palmer's Company Precedents, 11th Ed., Pt. II, pp. 501—531

(*b*) *Northern Counties, etc. Insce. Co.* 17 Ch. D. 336; *Great Britain Mutual Soc.* 20 Ch. D. 351.

(*c*) *Hartland* v. *General Exchange Bank*, 14 L. T. 863; *e. p. Clarke*, 7 Eq. 550; *e. p. Logan*, 9 Eq. 149; as to valuation of life policies, see *Bell's case*, 9 Eq. 706; *Lancaster' case*, 14 Eq. 72n; *English Assurance Co.* 14 Eq. 72; and of annuities, see *Hunt's Annuity case*, 1 H. & M. 79; *Lancaster's case* (q. v. s.).

(*d*) *Telegraph Construction Co.* 10 Eq. 384, 388; as to proof by a policy-holder holding a policy current at the date of the winding up, see *Law Car and General Insurance Corp.* (1913) 2 Ch. 103.

(*e*) Buckley on Companies, 9th Edn. p. 462; see also Palmer's Company Precedents, 11th Ed., Pt. II, pp. 471—473 and cases there cited.

(*f*) *New Oriental Bank Corp.* (1895) 1 Ch. 753.

(*g*) *Panther Lead Co.* (1896) 1 Ch. 978; cf. *Craig's claim*, (1895) 1 Ch. 267.

(*h*) *Llynvi Coal Co* 7 Ch. 28.

the *primâ facie* measure of damages is the difference between the contract price and the market price of the goods in question. But where goods were made to order and there was no available market the claimants were allowed to prove for profits which they would have made(*a*).

The time for proof may be fixed by the Court in a compulsory winding up(*b*), but as pointed out in the notes to section 191 a creditor may prove as long as there are any assets undistributed but not disturbing any former dividend(*c*). Subject to the foregoing limitation a creditor having a contingent claim may wait and see if the event takes place upon which the contingency is determined and then make his claim and prove his debt(*d*).

It has long been established that when a company is being wound up, whether an action is brought by a company, or a proof is carried in by a creditor of the company in the winding up, a set-off of a liquidated sum is admissible(*e*). The liquidator, when examining a proof of a debt, may also examine a set-off to such proof, in order to arrive at the amount, if any, for which the proof may be allowed(*f*).

Where the company is solvent, no question is likely to arise as to the rights of the secured creditors, where it is insolvent the rights of secured and unsecured creditors respectively must be determined as provided in the next section.

The mode of proof is not stated in the Act, it will be a matter to be provided for in the rules to be made thereunder.

Application of insolvency rules in winding up of insolvent companies.

229. [Sec. 207.] In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to

(*a*) *Vic Mill, Ltd.* (1913) 1 Ch 465
(*b*) S 191.
(*c*) *Hicks* v. *May*, 13 Ch D 236 ; *Kit Hill Tunnel, e. p Williams*, 1. Ch D. 590 ; *General Rolling Stock Co.* 7 Ch. 646 ; *Northern Counties Insce. Co.* 17 Ch D. 336
(*d*) *Trent and Humber Co.* 4 Ch 112
(*e*) *Mersey Steel and Iron Co* v *Naylor*, 9 Q. B. D. 648, 667 ; cf. *Presy. S. C. Ct. Ref.* I L. R. 28 Mad. 240 ; *Ahmedabad Advance Spinning & Weaving Co* v. *Lakshmishankar*, 7 Bom. L R 246
(*f*) *National Wholemeal, etc Co.* (1892) 2 Ch 457 ; cf *Biggerstaff* v. *Rowatt's Wharf*, (1896) 2 Ch. 93

debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

This section applies insolvency rules to the winding up of insolvent companies, but any company in liquidation must be treated as insolvent until it is shown that the assets are sufficient for payment of the debts in full(*a*). A secured creditor may realise his security and prove for the balance, or he may surrender his security and prove for his whole debt, or he may assess the value of his security and prove for the balance due after deducting the value assessed(*b*).

As between unsecured creditors voluntary creditors are to be paid *pari passu* with creditors for value(*c*), the object of the Act being to put all unsecured creditors upon an equality(*d*). This of course is subject to the priorities imposed by the next section. Interest will not run after a resolution for voluntary winding up where the company is insolvent(*e*).

Preferential payments.

[Sec. 209.]

230. (*1*) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses, and rates, whether payable to the Crown or to a local authority, due from the company at the

(*a*) *Milan Tramways Co.* 25 Ch. D. 587, 591.

(*b*) Presidency Towns Insolvency Act, 1909. Sch II, cls. 9, 10, 11; Provincial Insolvency Act, 1907, s. 31.

(*c*) *Re Whitaker* (1901) 1 Ch. 9.

(*d*) Lindley, L. J. in *Oak Pits Colliery Co* 21 Ch. D. 329.

(*e*) *Thomas Salt & Co. Ld.* 1908, W. N. 63; as to interest see also *Hughes' claim,* 13 Eq. 623; *Humber Iron Works and Shipbuilding Co.* Ch. 643.

date hereinafter mentioned and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant; and

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the company within the two months next before the said date.

(*2*) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

(*b*) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*3*) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(*4*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the

date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date hereinbefore in this section referred to is—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

The word "rates" has been held to include water-rates and rent for water-metre(a). Wages and salary need not be fixed to be brought within the clause; they may be payable by way of commission(b). A managing director is not a clerk or servant within the meaning of the section(c), but the fact of being a director does not prevent the same person also being a servant within the meaning of the section, where the constitution of the company allows of the employment of a director for special purposes(d). A secretary may be within the section, but a secretary who does not give his whole time to the service of the company and discharges the general duties of his office by a clerk whom he pays, is not(e). Contributors to a weekly periodical owned by a company, even though employed at a fixed salary, are not "clerks or servants" within the meaning of the Act(d). An analytical chemist employed by a company carrying on

(a) *Mannesmann Tube Co.* (1901) 2 Ch. 93. As to the Section generally, See *National Prov. Bank etc* v. *United El. Theatres, Ltd.* (1916) 1 Ch. 132, and *Westminster Crop. Etc. Co.* v *Chapman*, (1916), 1 Ch. 161.

(b) *Earle's Shipbuilding Co.* 1901, W. N. 78; *re Klein*, 1906, W. N. 148; 22 T. L. R. 664.

(c) *Newspaper Proprietary Synd.* (1900) 2 Ch. 349.

(d) *Beeton & Co.* (1913) 2 Ch. 279.

(e) *Cairney* v. *Back*, (1906) 2 K. B. 746

the business of general perfume manufacturers was held to come within the section(*a*). Persons who have acquired preferential rights under a voluntary winding up are not deprived of them if a Compulsory order is made (*b*).

Fraudulent preference.

231. (*1*) Any transfer, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

[Sec. 210.]

(*2*) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up, in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(*3*) Any transfer or assignment by a company of all its property to trustees for the benefits of all its creditors shall be void.

The law of insolvency as regards fraudulent preferences is made applicable to insolvent companies(*c*). The governing principles in determining whether a preference is fraudulent or not is that the Court will look at the real intention of the transaction(*d*). Even debentures issued within three months may be fraudulent preferences notwithstanding that they are issued in pursuance of an agreement made before the three months(*e*). Directors who make a payment by way

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(*a*) *G H Morison & Co Ltd* 106 L T. 731.

(*b*) *Havana Exploration Co. Ltd* (1916) 1 Ch 8

(c) See Presidency Towns Insolvency Act, 1909, s. 56; Provincial Insolvency Act, 1907, s. 37 as to avoidance of preference in certain cases.

(*d*) *Stenotyper Ld.* (1901) 1 Ch 250. In the following cases it was held that there had been a fraudulent preference; *Gaslight Improvement Co* v. *Terrell*, 10 Eq. 168; *Habershon's case*, 5 Eq 286; *Kent's case*, 37 Ch D 508; 39 Ch. D. 259: the contrary was held in the following: *re Vautin*, (1900) 2 Q. B. 325; *e p. Dyer*, (1901) 1 K. B 710; *e. p. Taylor*, 18 Q B D 295; *Sharp* v *Jackson*, 1899, A C 419.

(e) *Jackson Bassford Ld.* (1906) 2 Ch. 467

of a fraudulent preference may be made liable to repay the money to the liquidator under the misfeasance section(*a*).

Though in insolvency a set-off is allowed where there have been mutual dealings(*b*), there can be no set-off by a contributory who is also a creditor of the company of the debt against calls in the winding up so long as any creditors are unpaid(*c*), and to set off a debt against unpaid calls if done within three months of the winding up will be a fraudulent preference(*d*). Any person, who at the date when the charge or payment is made would be entitled to prove and share in the distribution of the insolvent company's assets, is a creditor within the section. A surety who has a right of proof in respect of his contingent liability is such a person(*e*). When a voluntary winding up is followed by a compulsory winding up the act of insolvency for the purposes of this section is the presentation of the petition(*f*).

Avoidance of certain attachments, executions, etc.

232. [Sec. 211.] (*1*) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding up shall be void.

(*2*) Nothing in this section applies to proceedings by the Government.

Notwithstanding the prohibition contained in the section the Court may grant leave to execute under this or under s. 171, but an applicant must show a reason for being allowed to do so(*g*). Where the solicitor and director of the company caused postponement of execution before a resolution for voluntary

(*a*) *Washington Diamond Mining Co* (1893) 3 Ch. 95

(*b*) Presidency Towns Insolvency Act, 1909, s. 47 ; Provincial Insolvency Act, 1907, s. 30.

(*c*) *Grissell's case*, 1 Ch. 528

(*d*) *Washington Diamond Mining Co.* (1893) 3 Ch 95

(*e*) *Blackpool Motor Car Co* (1901) 1 Ch. 77.

(*f*) *Russell Hunting Record Co* (1910) 2 Ch. 78, applying *Taurine Co.* 25 Ch. D 118.

(*g*) *Lancashire Cotton Spinning Co.* 35 Ch. D. 656 ; *Higginshaw Mills and Spinning Co* (1896) 2 Ch 544. See also Palmer's Company Precedent, 11th Ed. Pt. II, pp. 463, 464.

winding up was passed, the Court exercised its discretion in favour of the creditor and allowed execution to issue(a). See notes under section 169.

Effect of floating charge

233. [Sec. 212.] Where a company is being wound up a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

The object of this section is to prevent insolvent companies from creating floating charges to secure past debts or for moneys which do not go to swell their assets and become available for creditors. Hence the term 'cash' should not be interpreted by the light of decisions on the question whether shares in a company, *primâ facie* issued for payment in cash, have actually been paid for in cash(b).

The question whether any particular payment comes within the terms of the section as being in substance a present advance must always be a question of fact depending upon the circumstances of the case(c).

General scheme of liquidation may be sanctioned.

234. [Sec. 214.] (1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them:—

(i) pay any classes of creditors in full;

(a) *Armourduct Manfg. Co.* v. *Gen. Incandescent Co.* (1911) 2 K.B. 143.
(b) *Orleans Motor Co.* (1911) 2 Ch. 41
(c) *Columbian Fireproofing Co.* (1910) 1 Ch 758; affirmed (1910 2 Ch. 120

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

This section carries the power to enter into a compromise or arrangement a stage further. Section 153 deals with compromises and arrangements between a company and its creditors or members or any class of its creditors or members and makes compromises and arrangements binding on all if agreed to by a sufficient majority and sanctioned by the Court. That section is applicable both before and in the winding up. Section 212, which also is applicable before and in the winding up, provides that arrangements entered into between a company about to be or in course of being wound up voluntarily shall be binding, subject to the right of appeal to the Court, if sanctioned by an extraordinary resolution and on the creditors if accorded to by three-fourths in number and

value. The above sections, it will be observed, relate to compromises and arrangements between the company and its members or creditors collectively. Under this section the liquidator, subject to his obtaining the required sanction, may in effect enter into any compromise or arrangement. He may do so with creditors or contributories as a class under this section(*a*) and has exactly the same powers of compromising with creditors and debtors as an individual would have(*b*). Creditors and contributories are protected by the right to apply conferred by sub-sec.(*2*). Where a claim in a voluntary winding up has been submitted to the Court for adjudication under sec. 215, though an agreement for compromise between the liquidator and the claimant has been come to, the Court will not order it to be carried into effect, without considering the propriety of the compromise, notwithstanding that it has been sanctioned by a general meeting, but such sanction will be an important element in judging of its propriety(*c*). A compromise, the sanction for which has been improperly obtained, may be set aside(*d*).

The Court cannot compel the liquidator to accept a compromise either of a creditor's claim(*e*) or with a contributory(*f*).

The liquidator in a winding up under supervision cannot recognise a release of a contributory contained in a deed of the directors, without the sanction of the Court(*g*).

Power of Court to assess damages against delinquent directors, etc.

235. (*1*) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or

[Sec 215.]

(*a*) *Bank of Hindustan, etc* v *East Finan Assoc* L. R 2 P. C 489.
(*b*) *Albert Life Ass. Co.* 6 Ch. 381, 386.
(*c*) *Lama Coal Co.* 2 Ch. 692.
(*d*) *E. p Clarke,* 14 L. T 789 ; *Central Darjeeling Tea Co.* 1866, W. N. 361 ; *e. p. Garstin,* 6 L. T. 374.
(*e*) *International Contract Co* 26 L T. 358.
(*f*) *East of England Banking Co* 7 Ch. 309.
(*g*) *James* v. *May,* L. R. 6 H. L. 328.

breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) The Indian Limitation Act, 1908, shall apply to an application under this section as if such application were a suit.

The term "promoter" is not defined in the Act except as regards section 100(*a*). The term "manager" is defined as including any person occupying the position of manager by whatever name called and whether under a contract of service or not. It therefore includes a person authorised by the Board of Directors to manage the affairs of a company, and even a manager *de facto,* though not *de jure*(*b*). "Director" includes any person occupying the position of a director by whatever name called(*c*), and a *de facto* director is a director for the purposes of this section(*d*). Whether a person other than those specifically mentioned comes within the section or is an officer of the company will depend upon the circumstances of each particular case. The term 'officer' is stated in the definition clause (sec. 2 (11) to include any director, manager or secretary, but, save in sections 235, 236, and 237, not to include an auditor. This form of definition has the effect of

(*a*) See notes to s. 100 and sub-sec. (5) (*a*) of that section as to the meaning of the term.

(*b*) *Gibson* v. *Barton*, L. R. 10 Q. B. 329 ; followed in *Rex* v. *Lawson*, (1905) 1 K. B. 541

(*c*) Section 2(5).

(*d*) *Coventry and Dixon's case*, 14 Ch. D. 660.

extending the application of the term, for where *A* is declared to include *B*, the definition is extensive(*a*), and not exclusive(*b*). The definition puts it beyond doubt that directors, managers or secretaries are, and indicates that other persons also are, officers of a company, but, except as regards auditors, does not provide a solution of the question who is an officer, where it generally arises, in connection with persons other than those specifically mentioned. Managing agents such as are frequently employed in India to conduct the affairs of a company will probably be found to be included in either of the terms 'director' or 'manager' though, as the terms of their employment vary, and are dependent upon the agreement between themselves and the company and the company's articles of association, in so far as the latter relate to them, no hard and fast rule of general application as to their precise position can be formulated. "To be an officer there must be an office, and an office imports a recognised position with rights and duties annexed to it, and it would be an abuse of words to call a person an officer who fills no such position either *de jure* or *de facto*, but who happens to do some of the work which he would have to do if he were an officer in the proper sense of the word(*c*). A banker is not an officer within this section(*d*), nor is a trustee for debenture-holders(*e*), nor is a solicitor(*f*), unless special circumstances bring him within it(*g*).

An auditor is included by the definition clause in the term 'officer' for the purposes of this and the next two sections but not otherwise. The English Act contains no definition of the term, and in regard to an auditor it has been held that the questions to be considered are how he is appointed, by whom he is paid and what his duties are; and for such purposes the articles of association as well as the Act(*h*) are to

(*a*) Craies on Statute Law, 2nd Ed. 210

(*b*) *Dictum* of Ld. Blackburn in *e. p. Ferguson*, L. R. 6 Q. B. 280, 291 : ct. *The Gauntlet*, L. R. 3 Ad & Ecc. 381, 388, where it was cited with approval.

(*c*) *Per* Lindley, L. J. in *Western Counties Steam Bakeries and Milling Co* (1897) 1 Ch. 617 ; see *dicta* in cases relating to auditors.

(*d*) *Imperial Land Co. of Marseilles*, 10 Eq. 298.

(*e*) *Astley* v. *New Tivoli Ld.* (1899) 1 Ch. 151, 154.

(*f*) *Great Western Forest of Dean Coal Consumers' Co.* 31 Ch D. 496 ; *Harper's Ticket Issuing and Recording Machine Ltd.* 29 T. L. R. 63.

(*g*) *Liberator Soc.* 71 L. T. 406.

(*h*) *Vide* ss. 131, 132, 144, 145.

be looked at(a). It would however appear, but for the definition clause, that an auditor appointed under section 144 "to hold office until the next annual general meeting," would be an officer generally within the meaning of the Act. Where the auditors are simply accountants called in by the directors to do a piece of work, and do not pretend to be or act as if they are anything else, it has been held that they will not be within the section(b).

To be made liable under this section the officer must have been an officer of the company when the act was committed or assisted during such time as he was an officer(c). The remedy provided by the section is against officers personally guilty of some act of misfeasance and an order cannot be made against the directors *en masse* without specific findings against the individuals actually responsible(d).

The application may be made by the liquidator or any creditor or contributory ; it is for the Court to put the section in force if it thinks proper ; and if it is proper to put it in force the order may be made on the application of any one of these persons(e). A contributory cannot take out a summons unless he shows that the breach of duty has resulted in loss to the company, and that he has a direct pecuniary interest in the success of the application(f).

The jurisdiction of the Court is discretionary(e) ; in a case where the liquidator applied for an order against directors, and it appeared that most of the shareholders did not want the money and would return it if paid by the directors, and the other shareholders knew of what had been done, the Court refused to exercise its discretion(g).

Misfeasance, under the section, means according to judicial *dicta* a breach of duty resulting in loss to the company(f),

(a) *London and General Bank*, (1895) 2 Ch. 166 where the auditor was held to be an officer within the section ; followed in *Kingston Cotton Mills Co.* (1896) 1 Ch. 17 ; (1896) 2 Ch. 279 ; *Connell* v. *Himalaya Bank Ld.* I. L. R. 18 All. 12 ; *Leeds Estate Building and Investment Co.* v. *Shepherd*, 36 Ch. D. 787.

(b) *Western Counties Steam Bakeries & Milling Co.* (1897) 1 Ch. 617.

(c) *Mackay's case*, 2 Ch. D. 1.

(d) *Jadu Nandan Goswami* v. *Ashutosh Goswami*, I. L. R. 29 Cal. 688.

(e) *National Funds Ass. Co.* 10 Ch. D. 118 ; cf. *British Guardian Life Ass. Co.* 14 Ch. D. 335 ; *Jehangir B. Karani & Co.* I. L. R. 19 Bom. 88.

(f) *Bentinck* v. *Fenn*, 12 A. C. 652, 662 ; cf. *Coventry and Dixon's case*, 14 Ch. D. 660.

(g) *Sunlight Incandescent etc. Co.* 16 T. L. R. 535.

and includes cases other than those involving breach of trust in which an officer of the company has been guilty of a breach of his duty as such officer which has caused pecuniary loss to the company by misapplication of the assets, and for which he might have been made liable in an action(*a*). Promoters have been held liable for secret profits(*b*); auditors for certifying an erroneous balance-sheet(*c*); directors for dividends paid out of capital(*d*), for secret commission(*e*) and where they purported to buy their own property for the company(*f*). The Court has power to order a director to repay a dividend declared under a delusive and fraudulent balance-sheet(*g*), and dividends paid out of capital(*h*), and a bonus declared and credited to a director against arrears of calls then due from him(*i*), and money purporting to have been paid for preliminary expenses but really in order to provide the directors' qualifications(*j*). But shareholders who have received dividends paid out of capital with full knowledge cannot retain the dividends and at the same time proceed against the directors(*k*).

The executors of a deceased director cannot be proceeded against under this section(*l*). The liquidator may be held personally liable for costs of a misfeasance summons(*m*).

The Court has powers to grant relief under sec. 281 in cases of negligence or breach of trust by a director when

(*a*) *Kingston Cotton Mills Co* (No 2) (1896) 2 Ch 279, 291

(*b*) *Gluckstein* v. *Barnes*, 1900, A. C. 240, *Sale Hotel Co* 1898, W N. 40; 77 L T 681: *Leeds and Hanley Theatres*, (1902) 2 Ch 809, and Palmer's Company Precedents, 11th Ed., Pt II, p 699

(*c*) *London and General Bank*, (1895) 2 Ch 673, cf *Kingston Cotton Mill Co* (No. 2), q v s; *Leeds Co.* v. *Shepherd*, 36 Ch D 787 and see cases quoted in notes under sec 145.

(*d*) *National Funds Ass Co.* (q. v s.), *in re Sharpe*, (1892) 1 Ch. 154; *Flitcroft's case* 21 Ch. D 519, *Oxford Building Soc* 35 Ch D. 502, *Leeds Estate Co* v. *Shepherd*, 36 Ch D. 787; *Thomas* v *Devonport Corp* (1900) 1 Q. B. 16.

(*e*) *Hay's case*, 10 Ch 593

(*f*) *Cape Breton Co* 29 Ch. D 795.

(*g*) *Stringer's case*, 4 Ch 475.

(*h*) *National Funds Co* 10 Ch D 118, *Flitcroft's case*, 21 Ch D 519; *Oxford Building Soc*. 35 Ch D 502; *Leeds Estate Co* v. *Shepherd*, 36 Ch. D. 787. See also Palmer's Company Precedents, 11th Ed, Pt. II, pp. 700—705.

(*i*) *Rance's case*, 6 Ch. 104

(*j*) *Englefield Colliery Co.* 8 Ch. D. 388.

(*k*) *Towers* v. *African Tug Co.* (1904) 1 Ch. 558.

(*l*) *British Guardian Life Ass. Co.* 14 Ch. D. 335.

(*m*) *W. Powell & Sons*, (1896) 1 Ch. 681

he has acted honestly and reasonably and ought fairly to be excused.

See also notes under section 84 as to director's liability.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes or is privy to the making of, any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

[Sec. 216.]

Penalty for falsification of books.

237. (*1*) If it appears to the Court in the course of a winding up by or subject to the supervision of the Court that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

[Sec. 217.]

Prosecution of delinquent directors, etc.

(*2*) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

In order to determine whether leave ought to be given to institute criminal proceedings, and whether the costs of the prosecution ought to be paid out of the assets of the company the Court will look at the question from the point of view of an individual, and will consider whether it would be the duty of a good citizen even at a loss to himself to institute and carry on proceedings to punish the criminal(*a*).

Penalty for false evidence.

238. [Sec. 218.] If any person, upon any examination upon oath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Meetings to ascertain wishes of creditors or contributories.

239. [Sec. 219.] (*1*) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(*2*) In the case of creditors, regard shall be had to the value of each creditor's debt.

(*3*) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

Meetings have been directed to be called for the purpose of ascertaining whether the shareholders wished that the com-

(*a*) *London and Globe Finance Corp. Ld.* (1903) 1 Ch. 728; see also *Denham & Co.* 51 L. T. 570; 53 L. J. Ch. 1113.

pany should be wound up(*a*) and to consider in what way the company should be wound up(*b*), and whether there should be an order or whether the petition should stand over(*c*), but a meeting will not be ordered to be held when no case for winding up is made out(*d*).

This section is auxiliary to sections 174 and 223, which relate to the Court having regard to the wishes of creditors or contributories.

240. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

[Sec. 220.]

Documents of company to be evidence.

The books are no more than *primâ facie* evidence, and a director whom it was sought to make liable as a contributory and who showed that he had not agreed to become a member of the company was held not to be liable, though his name appeared in the register(*e*).

241. After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

[Sec. 221.]

Inspection of documents.

Sections 36 and 124 cease to have any application once the company is in liquidation under a compulsory or supervi-

(*a*) *Thomas Edward Brinsmead & Sons*, (1897) 1 Ch. 406, 417.
(*b*) *City and County Bank*, 10 Ch. 470.
(*c*) *Western of Canada Oil, etc. Co.* 17 Eq. 1.
(*d*) *Joint Stock Coal Co.* 8 Eq. 146; *Langham Skating Rink*, 5 Ch. D. 669.
(*e*) *Arnot's case*, 36 Ch. D. 702.

sion order(a), and a creditor or contributory who desires inspection must obtain an order of court(b).

Disposal of documents of company.

242. (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

[Sec. 222.]

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

The words "about to be dissolved" refer in a compulsory winding up to dissolution under sec. 194, in the case of a voluntary winding up to dissolution under sec. 217. An order was made upon the liquidator after dissolution under a voluntary winding up on the ground that he had the documents in his absolute control, there having been no resolution as to the disposition of the documents(c).

Power of Court to declare dissolution of company void.

243. (1) Where a company has been dissolved the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the

[Sec. 223.]

(a) *Kent Coalfields Synd.* (1898) 1 Q B 754; and *Somerset* v. *Land Securities Co.* 1897, W. N. 29.

(b) *North Brazilian Sugar Factories*, 37 Ch. D. 83

(c) *London and Yorkshire Bank* v *Cooper*, 15 Q B. D 473

liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

An order declaring the dissolution to be void was made upon the application of a creditor who had no notice of the dissolution, and the liability to whom had neither been discharged by the old company nor taken over by a new company which had agreed to take over its business(a), and also upon the application of the liquidator who realised assets subsequently to the dissolution(b)

244. (1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

[Sec. 224.]

Information as to pending liquidations

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or

(a) *Spottiswoode, Dixon and Hunting Ld.* (1912) 1 Ch 410.
(b) *Henderson's Co* 105 L T 370.

extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

This section is not limited in its application to companies which are wound up under the order of the Court, but applies also to voluntary liquidations and to voluntary liquidations continued under supervision(a).

Court or person before whom affidavit may be sworn.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in British India, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor-General in Council, or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

[Sec. 228.]

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

(a) *Stock and Share Auction and Banking Co.* (1894) 1 Ch. 73.

Rules.

246. (*1*) The High Court may, from time to time, make rules(*a*) consistent with this Act and with the Code of Civil Procedure, 1908, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a company and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed.

[Sec. 173.]

Power of High Court to make rules.

(*2*) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

(*a*) For Rules, *See* Appendix F. Sub sec. (1) was Amended by Act XI of 1915.

Removal of Defunct Companies from Register.

Registrar may strike defunct company off register.

[Sec. 242.]

247. (*1*) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter enquiring whether the company is carrying on business or in operation.

(*2*) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the local official Gazette with a view to striking the name of the company off the register.

(*3*) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the local official Gazette, and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(*4*) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the local official Gazette and send

to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the local official Gazette, and, on the publication in the local official Gazette of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

A company which is carrying on business only for the purpose of winding up voluntarily and realising its assets is "carrying on business or in operation," and an order can be made under sub-sec.(6)(a).

PART VI.

Registration Office and Fees.

Registration offices.

248. (*1*) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Local Government thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

[Sec. 243.]

(*2*) The Local Government may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(*3*) The salaries of the persons appointed under this section shall be fixed by the Local Government.

(*4*) The Local Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(*5*) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Local Government, not exceeding one rupee for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document

(a) *Outlay Assurance Soc.* 34 Ch. D. 479.

or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as the Local Government may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the Local Government otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as the Local Government may for the time being authorise; but, in the event of the Local Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Local Government may appoint.

249. (1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the Governor-General in Council may direct. Fees.

[Sec. 244.]

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

It has been held that the mere fact that a promoter pays the registration-fees and *ad valorem* stamp-duty on the registration of a company does not in itself entitle him to recover them from the company(a). Where a company adopts fresh articles of association in supersession of those in force, the document is nothing more than the record of a special resolution and does not require to be stamped(b).

(a) *Clinton's Claim*, (1908) 2 Ch. 515.
(b) *New Egerton Woollen Mills*, I. L. R. 22 All. 131.

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application of Act to companies formed under former Companies Acts

250. [Sec 245.] In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee as if the company had been formed and registered under this Act as a company limited by guarantee; and, in the case of a company other than a limited company, as if the company formed and registered under this Act as an unlimited company:

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882;

(2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act, 1882, as the case may be.

Application of Act to companies registered but not formed under former Companies Acts.

251. [Sec. 246.] This Act shall apply to every company registered but not formed under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, or under the Indian Companies Act, 1866, or the Indian Companies Act,

1882, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them.

252. [Sec. 248.] A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct. **Mode of transferring.**

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

253. [Sec. 249.] (*1*) With the exceptions and subject to the provisions mentioned and contained in this section,— **Companies capable of being registered.**

(i) any company consisting of seven or more members, which was in existence on the first day of May eighteen hundred and eighty-two, including any company registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, and

(ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament or Act of the Governor-General in Council other than this Act, or of Letters Patent, or being other-

wise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

(2) Provided as follows:—

(*a*) a company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council or by Letters Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section;

(*b*) a company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(*c*) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose;

(*e*) where a company not having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(*3*) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles.

(*4*) A company registered under the Indian Companies Act, 1882, shall not be registered in pursuance of this section.

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent **Definition of "joint-stock company."**

[Sec. 250.]

paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other person; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

[Sec. 252.

255. Before the registration in pursuance of this Part of a joint-stock company there shall be delivered to the registrar the following documents (that is to say):—

(*1*) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(*2*) a copy of any Act of Parliament, Act of the Governor-General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(*3*) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(*b*) the number of shares taken and the amount paid on each share;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar— **Requirements for registration by other than joint-stock companies.**

[Sec. 253.]

(*1*) a list showing the names, addresses and occupations of the directors of the company; and

(*2*) a copy of any Act of Parliament, Act of the Governor-General in Council, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the company; and

(*3*) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

257. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by a declaration of any two or more directors or other principal officers of the company. **Authentication of statement of existing companies.**

[Sec. 254.]

Registrar may require evidence as to nature of company.

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

[Sec. 255.]

On registration of banking company with limited liability, notice to be given to customers.

259. (*1*) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty-two proposes to register as a limited company, it shall at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

[Sec. 256.]

(*2*) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act ot Parliament or Act of the Governor-General in Council or by Letters Patent.

[Sec. 257.]

Addition of "Limited" to name.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

[Sec. 258.]

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule the registrar shall certify under his hand that the company applying for registration is incorporated, as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

[Sec. 259.]

Certificate of registration of existing companies.

263. All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

[Sec. 26c.]

Vesting of property on registration.

264. The registration of a company in pursuance of this Part shall not affect the rights of liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

[Sec. 261.]

Saving of existing liabilities.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event

[Sec. 262.]

Continuation of existing suits.

of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

[Sec. 263.]

266. When a company is registered in pursuance of this Part—

(i) all provisions contained in any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;

(ii) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor-General in Council relating to the company;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the Governor-General in Council, to alter any provision contained in any Letters Patent relating to the company;

(*e*) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory the pro-

vision of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply;

(iii) the provision of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of the Parliament, Act of the Governor-General in Council, Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company;

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may by virtue of any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

267. (*1*) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. **Power to substitute memorandum and articles for deed of settlement.**

[Sec. 264.]

(*2*) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications:—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles; and,

(*b*) on the registration of the alteration being certified by the registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(*3*) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an Act of the Governor-General in Council. a Royal Charter or Letter's Patent.

Power of Court to stay or restrain proceedings.

268. [Sec. 265.] The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

See notes under section 169.

Suits stayed on winding up order.

269. [Sec. 266.] Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

See notes under section 169.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company."

270. [Sec. 267.] For the purposes of this Part, the expression "unregistered company" shall not include a railway company incor-

porated by Act of Parliament or by an Act of the Governor-General in Council, nor a company registered under the Indian Companies Act, 1866, or under any Act repealed thereby, or under the Indian Companies Act, 1882, or under this Act, but, save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

271. (*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :— **Winding up of unregistered companies.**

[Sec. 268.]

(i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company ;

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision ;

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say) :—

(*a*) if the company is dissolved, or has ceased to carry on business or is carrying on

business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up;

(iv) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor:

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to

*the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

An unregistered company to be wound up by the Court must consist of at least eight members(*a*) and be within the provisions of sub-sec.(*iii*) (*b*). If an association is illegal under the Act (*vide* sec. 4) *primâ facie* it cannot be wound up by the Court(*c*). A foreign company may be wound up under this section if it has a branch office and assets within the jurisdiction(*d*), but not if it only carries on business by means of agents(*e*).

Contributories in winding up of unregistered companies.

272. (*1*) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

[Sec. 269.]

(*2*) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories shall apply.

(*a*) S. 270 ; *Bolton Benefit Loan Soc. Corp.* v. *Booth*, 12 Ch D. 679 ; cf. *Victoria Society, Knottingly, in re.* (1913) 1 Ch. 167, which was the case of an unregistered friendly society : cf. *Osmondthorpe Hall Freehold, etc. Soc.* 1913, W. N. 243. See also Palmer's Company Precedents, 11th Ed. Pt. II, pp. 17—20, 64.

(*b*) *Equitable Assurance Soc* 2 Ind. Cas. 164.

(*c*) *Padstow Total Loss, etc. Assoc.* 20 Ch. D. 137 ; *Ilfracombe, etc. Soc.* (1091) 1 Ch. 102. See also *South Wales Atlantic S. S. Co* 2 Ch. D 763.

(*d*) *Commercial Bank of South Australia*, 33 Ch. D. 174 ; *Mercantile Bank of Australia*, (1892) 2 Ch. 204 ; *Syria Ottoman Rail Co.* 20 T. L. R. 217.

(*e*) *Lloyd Generale Italiano*, 29 Ch. D. 219.

273. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

[Sec. 270.]

Power to stay or restrain proceedings.

See notes under section 169.

274. Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

[Sec. 271.]

Suits stayed on winding up order.

See notes under section 169.

275. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that pro-

[Sec. 272.]

Directions as to property in certain cases.

perty, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of this Part cumulative.

276. [Sec. 273.] The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X.

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA.

Requirements as to companies established outside British India.

277. [Sec. 274.] (*1*) Every company incorporated outside British India which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting

or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof:

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and managers (if any) of the company;

(*d*) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such person as aforesaid, the company shall, within the prescribed time(*a*), file with the registrar a notice of the alteration.

(*2*) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(*3*) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

(*i*) in a case where by the law, for the time being in force, of the country in which the company is incorporated such com-

(*a*) One month after date upon which particulars of the alteration could have been received by the Registrar in due course of post if despatched with due diligence. *vide* Indian Companies Rules, 1914, R. 10.

pany is required to file with the public authority an annual balance-sheet,—a copy of that balance-sheet; or

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act:

Provided that the Governor-General in Council may, by notification in the *Gazette of India* subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement.

(*4*) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its share or debentures in British India state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters, and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company.

(*5*) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(*6*) For the purposes of this section—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "place of business" includes a share transfer or share registration office;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called; and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(*7*) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

For forms of lists of documents presented for filing under this section, of lists of directors and managers, of return of persons authorised to accept service under this section ; of notice of alteration in charter, etc., of notice of alteration in the address of the registered or principal office of the company, of notice of alteration of directors or managers, of notice of alteration in the names or addresses of persons authorised to accept process, and of statement of affairs, see Schedule to the Indian Companies Rules, 1914, Forms XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII.

Companies to which section 26(3) of the Companies (Consolidation) Act, 1908, 8 Edw. 7th, ch. 69 applies are exempted under the proviso to sub-section (*3*) from the requirements of that sub-section, subject to the following conditions, namely, that the company (1) complies with the provisions of the said statute as to the statement in the form of a balance-sheet mentioned in section 26(*3*) thereof ; (2) files in every year with the Registrar of the province in which the company has its principal place of business a true copy of the last statement which has been forwarded to the Registrar of Companies as required by the said statute(*a*). Where documents required to be filed are not in the English language translations must be furnished(*b*).

PART XI.

SUPPLEMENTAL.

Legal proceedings, offences, etc.

Cognizance of offences.

278. (*1*) No Court interior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(*2*) If any offence which by this Act is declared to be punishable by fine only is committed by any

(*a*) *Gazette of India*, February 21, 1914, Pt. I, p. 258.
(*b*) Indian Companies Rules, 1914, R. 5, 8, 9. See Rule 7, as to certifying copies of documents required to be field.

person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

279. [Sec. 277.] The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Applications of fines.

280. [Sec. 278.] Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power to require limited company to give security for costs.

Where the plaintiff is a foreign company which has no immoveable property within British India an order for security for costs may be made under O. XXV, R. 1, of the Civil Procedure Code, 1908. This section extends the liability to give security to any plaintiff company and places it upon wider grounds. When the company is a going concern what will be "reason to believe that the company will be unable to pay the costs of the defendant" if successful, must depend on the facts of each case, and a stronger case must be made out than if the company is in liquidation. For, in the latter event, the fact of the company being in liquidation

might be taken to be sufficient "reason to believe" the assets to be insufficient unless evidence to the contrary was given(*a*). A liquidator who takes out a misfeasance summons is not within the section(*b*).

Power of Court to grant relief in certain cases.

[Sec. 279.]

281. If in any proceeding before any Court against a director of a company for negligence or breach of trust it appears to such Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper.

In order to obtain relief it is not enough for a director to establish that he acted honestly and reasonably(*c*); unless both are made out, the court cannot help him, but if both are made out there is then a case for the court to consider whether the director ought fairly to be excused for the breach, looking at all the circumstances(*d*).

Penalty for false statement.

[Sec. 281.]

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it

(*a*) *Northampton Coal, etc. Co.* v. *Midland Waggon Co* 7 Ch. D. 500 which was interpreted as being authority for holding that the Court is bound to order security for costs where the company is in liquidation, and there is no evidence to rebut the inference that the assets will be insufficient to pay the defendants costs if he succeeds : *Pure Spirit Co.* v. *Fowler*, 25 Q. B. D. 235. See Palmer's Company Precedents, 11th Ed. Pt. II, pp. 449, 450.

(*b*) *Strand Wood Co.* (1904) 2 Ch. 1.

(*c*) *Re Dive, Dive* v. *Roebuck*, (1909) 1 Ch. 328.

(*d*) *National Trustees Co. of Australasia* v. *Gen. Fin. Co. of Australasia*, 1905, A. C. 373, 381 ; *Smith* v. *Thompson*, 71 L. J. Ch. 411 ; *re Turner, Barker* v. *Ivimey*, (1897) 1 Ch. 536 ; *re Second East Dulwich, etc. Soc.* 68 L. J. Ch. 196 ; *re Grindey, Clews* v. *Grindey*, (1898) 2 Ch. 593 ; *Perrins* v. *Bellamy*, (1899) 1 Ch. 797 ; *Lord de Clifford*, (1900) 2 Ch. 707.

to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Directors may be held criminally liable under the Indian Penal Code, for putting before the shareholders balance-sheets which they know to be materially false and misleading in order to obtain wrongful gain for themselves or to cause wrongful loss to others(a).

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used. [Sec. 282.] **Penalty for improper use of word "Limited."**

284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Indian Companies Act, 1882, shall be deemed to remain in full force. [Sec. 287.] **Saving of pending proceedings for winding up.**

285. Every instrument of transfer or other document made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force. [Sec. 288.] **Saving of document.**

(a) *Queen-Empress* v. *Moss*, I. L. R. 16 All. 88.

Former registration offices, registers, and registrars continued.

286. (*1*) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

[Sec. 289.]

(*2*) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(*3*) The existing registrars, assistant registrars and officers in those offices shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Local Government with regard to the execution of their duties.

Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.

287. Nothing in this Act shall affect the provisions of the Indian Life Assurance Companies Act, 1912, or of the Provident Insurance Societies Act, 1912.

[Sec. 293.]

Construction of "registrar of joint-stock companies" in Act XXI of 1860.

288. In sections 1 and 18 of Act No. XXI of 1860 (for the registration of Literary, Scientific and Charitable Societies), the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

Act not to apply to Banks of Bengal, Madras or Bombay.

289. Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

Repeal of Acts and Savings.

290. (*1*) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof:

[Sec. 286.]

Provided that the repeal shall not affect—

(*a*) the incorporation of any company registered under any enactment hereby repealed; nor

(*b*) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(*c*) Table A in the First Schedule annexed to the Indian Companies Act, 1882, or any part thereof so far as the same applies to any company existing at the commencement of this Act.

(*2*) All fees directed, resolutions passed and other things duly done under any enactment hereby repealed, shall be deemed to have been directed, passed or done under this Act.

(*3*) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

THE FIRST SCHEDULE.

(*See sections* 2, 17, 18, 79, 266.)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined: and words importing the singular shall include the plural, and *vice versâ,* and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable

by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, *A B* of , in consideration of the sum of rupees paid to me by *C D* of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid.

As witness our hands the day of .

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by

any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33 The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

Share-warrants.

35. The company may issue share-warrants, and accordingly the directors may in thier discretion, with respect to any share which is fully paid-up, on application in writing

signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may, by special resolution,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (*1*) of section 50 of the Indian Companies Act, 1913;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;

(d) reduce its share capital in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 78 of the Indian Companies Act, 1913. If at any time there are not within British India sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting.

49. Fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given

in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be

necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power-of-attorney or other authority (if any), under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve:—

Company, Limited

"I of in the district of , being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary. as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913.

Powers and duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Indian Companies Act, 1913, or any statutory

modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appoinments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and, of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors, and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

(a) ceases to be a director by virtue of section 85 of the Indian Companies Act, 1913; or

(b) holds or any partner of his, or the firm of which he is a member, holds any other office of profit under the company except that of managing director or manager; or

(c) is adjudged insolvent; or

(*d*) is found lunatic or becomes of unsound mind; or

(*e*) is concerned or participates in the profit of any contract with the company; or

(*f*) is punished with imprisonment for a term exceeding six months:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increase or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman

is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed(*a*) shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members persent, and, in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such *interim* dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out of profits.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the

(*a*) Amended by Act X of 1914.

shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this articles as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons enitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

(*a*) of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and

(*b*) of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or

book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. The profit and loss account shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of the expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Audit.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force.

Notices.

112. (*1*) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the company for the giving of notices to him.

(*2*) Where a notice is sent by post, serivce of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

113. If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British India supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share-warrants) except those members who (having no registered address within Biritsh India) have not supplied to the company an address within British India for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member, who, but for his death or insolvency, would be entitled to receive notice of the

meeting. No other persons shall be entitled to receive notice of general meetings.

TABLE B.

(See sections 249 and 262.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

I.—By a Company having a Share Capital.

	Rs.	A.	P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ..	40	0	0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees ..	1	0	0
3. For registration of any increase of share capital made after the first registration of the Company, the same fees per 10,000 rupees or, part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :			
Provided that no Company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable of an increase of share capital after registration, the fees paid on registration.			
4. For registration of any existing Company, except such Companies as are by this Act, exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
5. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up	5	0	0
6. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of ..	5	0	0

II.—By a Company not having a Share Capital.

	Rs.	A.	P.
1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	40	0	0
2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100	0	0
3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable if such increase had been stated in the articles of association at the time of registration	5	0	0
Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
6. For registration of any existing Company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
7. For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up	5	0	0
8. For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of ..	5	0	0

THE SECOND SCHEDULE.

(*See section* 98.)

STATEMENT IN LIEU OF PROSPECTUS

filed by

LIMITED,

pursuant to section 98 of the Indian Companies Act, 1913

Presented for filing by

THE INDIAN COMPANIES ACT, 1913,

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company.	Rs.
Divided into	Shares of Rs. each. " " " " " "
Names, descriptions and addresses of directors or proposed directors and of the managers or proposed managers.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of R fully paid.

STATEMENT IN LIEU OF PROSPECTUS—*contd.*

The consideration for the intended issue of those shares and debentures.	2. shares upon which Rs. per share credited as paid. 3. Debenture Rs. 4. Consideration.
Names and addresses of (*a*) vendors of property purchased or acquired, (*b*) or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price .. .. Rs. Cash .. .. ,, Shares .. .. ,, Debentures .. ,, Goodwill .. Rs.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or Rate of the commission	Amount paid. ,, payable. Rate per cent.
Estimated amount of preliminary expenses.	Rs
Amount paid or intended to be paid to any promoter. Consideration for the payment ..	Name of promoter Amount Rs. Consideration :—

(*a*) For definition of vendor, see section 94 of the Indian Companies Act, 1913.
(*b*) See section 95 of the Indian Companies Act, 1913.

STATEMENT IN LIEU OF PROSPECTUS—*concld.*

Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing.

THE THIRD SCHEDULE.

FORM A.

(*See sections* 6 *and* 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1*st.*—The name of the company is "The Eastern Steam Packet Company, Limited."

2*nd.*—The registered office of the company will be situate in the province of Bombay.

3*rd.*—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4*th.*—The liability of the members is limited.

5*th.*—The share capital of the company is two hundred thousand rupees divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A. B. of, merchant	200
2. C. D. ,, ,, ...	25
3. E. F. ,, ,, ...	30
4. G. H. ,, ,, ...	40
5. I. J. ,, ,, ...	15
6. K. L. ,, ,, ...	5
7. M. N. ,, ,, ...	10
Total shares taken .	325

Dated the day of 19 .

Witness to the above signatures,

X. Y. of

FORM B.

(*See sections* 7 *and* 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Mutual Calcutta Marine Association, Limited"

2nd.—The registered office of the company will be situate in Calcutta.

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertkes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of

Witness to the above signatures,

X. Y. of

Articles of Association to accompany preceding Memorandum of Association.

Number of Members.

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to call a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say):— if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day

in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die.*

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913, is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23 (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, , of
being a Member of the Company, Limited, hereby appoint of
as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 1913, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

Audit

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C D. of
"3. E. F. of
"4. G. H. of
"5. I. J of
"6. K. L. of
"7. M. N. of

Dated the day of 19

Witness to the above signatures,

X. Y. of

FORM C.

(*See sections* 7 *and* 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The regstered office of the company will be situate in the province of Bengal.

3rd.—The objects for which the company is established are "the facilitating travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object"

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding fifty rupees.

6th.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	200
"2. C. D. of	25
"3. E. F. of	30
"4. G. H. of	40
"5. I. J. of	15
"6. K. L. of	5
"7. M. N. of	10
Total shares taken .	325

Dated the day of 19 .

Witness to the above signatures,

X. Y. of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of 19

Witness to the above signatures,

X. Y. of

FORM D.

(*See sections* 8 *and* 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company."

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q. of Bombay is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	3
"2. C. D. of	2
"3. E. F. of	1
"4. G. H. of	2
"5. I. J. of	2
"6. K. L. of	1
"7. M. N. of	1
Total shares taken ..	12

Dated the day of 19

Witness to the above signatures,

X. Y. of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Indian Companies Act, 1913, shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant
"2. C. D. of
"3. E. F. of
"4. G H of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of 19
Witness to the above signatures,
X. Y. of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(*See section* 32.)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19).

Nominal share capital Rs.	divided into*	shares of Rs	each
		shares of Rs	each.

* When there are shares of different kinds or amounts (*e. g*, Preference and Ordinary or Rs. 200 or Rs. 100), state the numbers and nominal value separately.

Total number of shares taken up* to the day of 19 which number must agree with the total shown in the list as held by existing members.	
Number of shares issued subject to payment wholly in cash.	
Number of shares issued as fully paid up otherwise than in cash	
Number of shares issued as partly paid up to the extent of per share otherwise than in cash	
† There has been called up on each of shares	Rs.
There has been called up on each of shares	Rs
There has been called up on each of shares . ..	Rs.
‡ Total amount of calls received, including payments on application and allotment	Rs.
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	Rs
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share	Rs.
Total amount of calls unpaid	Rs.
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary	Rs.
Total amount (if any) paid on § shares forfeited	Rs.
Total amount of shares and stock for which share-warrants are outstanding	Rs.
Total amount of share-warrants issued and surrendered respectively since date of last summary	Rs.
Number of shares or amount of stock comprised in each share-warrant	Rs.
Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.	Rs.

List of Persons holding shares in the company limited, on the day of 19 , and of persons who have held shares herein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

---

* When there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary or Rs. 200 or Rs. 100), state the numbers and nominal values separately.

† Where various amounts have been called or there are shares of different kinds state them separately.

‡ Include what has been received on forfeited as well as on existing shares.

§ State the aggregate number of shares forfeited.

Folio in register ledger containing particulars	Names, Addresses and Occupations					Account of shares.				
	Name in full.	Father's name.	Address.	Occupation or caste.	* Number of shares held by existing members at Date of Return	§ Particulars of Shares transferred since the Date of the last Return by Persons who are still Members		§ Particulars of Shares transferred since the Date of the last Return by Persons who have ceased to be Members.		Remarks.
						Number †	Date of Registration of Transfer	Number ‡	Date of Registration of Transfer.	

Names and addresses of the persons who are the Directors of the , Limited, on the day of 19 .

Names	Addresses

Names and addresses of the persons who are the managers of the , Limited, on the day of 19

Names.	Addresses

Note.—Banking companies must add a list of all their places of business,

I, do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of 19 .

(Signature)________________

(State whether director, manager or secretary)__________

* State the aggregate number of shares forfeited (if any)

† The aggregate number of shares hold, and not the distinctive numbers, must be stated, and the columns must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date The particulars should be placed opposite the name of the transferor and not opposite that of the transfer, but the name of the transferee may be inserted in the Remarks column immediately opposite the particulars of each transfer

FORM F.

(*See Section* 132.)

LIMITED.

BALANCE-SHEET AS AT 19 .

CAPITAL AND LIABILITIES.	Rs	As	P	Rs	As	P
CAPITAL— Authorised Capital.. .shares of Rs . each.		.				
Issued Capital. ..shares of Rs..... each						
Subscribed Capital....shares of Rs .. each	.	.				
Amount called up at Rs..........per share.	..	..	.			
Less—Calls unpaid	..	..	.			
Add—Forfeited shares (amount paid up.)	.			.		..
RESERVE FUND OR DEVELOPMENT FUND.				..		
ANY SINKING FUND	..	..	..	..	..	.

PROPERTY AND ASSETS.	Rs.	As.	P.	Rs	As.	P
FIXED CAPITAL EXPENDITURE (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, leaseholds, railway sidings, plant, machinery, furniture, development of property, patents, trade-mark and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the total depreciation written off under each head)				..		..
PRELIMINARY EXPENSES .				.	.	..
COMMISSION OR BROKERAGE				..		..
(Commission or Brokerage paid for underwriting or placing shares or debentures until written off)				.	.	..
STORES AND SPARE GEAR .				.	.	..
LOOSE TOOLS . .				..	..	..

BALANCE-SHEET.—(*Concluded*).

CAPITAL AND LIABILITIES.—(*Concluded*).	Rs.	As	P.	Rs.	As	P.	PROPERTY AND ASSETS.—(*Concluded*).	Rs.	As	P.	Rs.	As	P.
ANY OTHER FUND CREATED OUT OF NET PROFITS.							LIVE STOCK						
ANY PENSION OR INSURANCE FUND.							STOCK IN TRADE (Stating mode of valuation, *e g.* cost or market-value)						
PROVISION FOR BAD AND DOUBTFUL DEBTS							BILLS OF EXCHANGE						
LOANS ON MORTGAGE OR MORTGAGE DEBENTURE BONDS							BOOK DEBTS (Distinguishing in the case of a Bank between those considered good and in respect of which the Bank is fully secured and those considered good for which the Bank holds no security other than the debtor's personal security, and distinguishing in all cases between debts considered good and debts considered doubtful or bad Debts due by Directors or other officers of the Company or any of them either severally or jointly with any other persons to be separately stated in all cases.)						
LOANS OTHERWISE SECURED (Stating the nature of security)							ADVANCES (Recoverable in cash or in kind or for value to be received, *e g*, Rates, Taxes, Insurance,etc.)						
LOANS UNSECURED													
INTEREST													
Accrued on Mortgages, Debentures or other Secured Loans													
UNCLAIMED DIVIDENDS													
LIABILITIES													
For Goods supplied													
,, Expenses													
,, Acceptances													
,, Other Finance													
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS (For the portion for which value has still to be given. *e.g*, in the case of the following classes of Companies—Newspaper, Fire Insurance, Theatre, Club, Banking Steamship Companies, &c)													

Liabilities				Assets			
PROFIT AND LOSS ..				INVESTMENTS .. .. (Nature of Investment and mode of valuation, e.g., cost or market-value)			
Balance as per previous Balance Sheet.				INTEREST ACCRUED ON INVESTMENTS.			
Less—appropriation thereof				CASH AND OTHER BALANCES ..			
Balance brought forward ..				Amount in hand ..			
Profit since last Balance Sheet				Balances with Agents and Bankers (in detail showing whether on Deposit or current account, etc.)			
(*N.B.*—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance Sheet.)				Profit and Loss (giving, in the case of a debit balance, details as far as possible as in the case of a credit balance.)			
CONTINGENT LIABILITIES—							
Claims against the Company not acknowledged as debts							
Moneys for which the Company is contingently liable							
Arrears of Cumulative Preference Dividends.							

FORM G.

(*See Section* 136.)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

* The share capital of the company is Rs divided into shares of each

The number of shares issued is
Calls to the amount of Rs. per share have been made under which the sum of Rs has been received

The liabilities of the company on the thirty-first day of December (or thirtieth of June) were :—

Debts owing to sundry persons by the company:
Under decree, Rs
On mortgages or bonds, Rs.
On notes, bills or hundis, Rs
On other contracts, Rs
On estimated liabilities, Rs.

The assets of the company on that day were:
Government securities [stating them], Rs.
Bills of exchange, hundis and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

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* If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted.

THE FOURTH SCHEDULE.

(*See Section* 290.)

ENACTMENTS REPEALED.

1	2	3	4
Year	No	Subject or short title	Extent of repeal
1882 ..	VI	The Indian Companies Act, 1882.	So much as has not been repealed
1887 ..	VI	The Indian Companies Act (1882) Amendment Act, 1887	The whole
1891 ..	XII	The Amending Act, 1891 ..	So much of the Second Schedule as relates to the Indian Companies Act, 1882
1895	XII	The Indian Companies (Memorandum of Association) Act, 1895	The whole
1899	IX	The Indian Arbitration Act, 1899.	The second proviso to section 3 relating to the Indian Companies Act, 1882
1900 ..	IV	The Indian Companies (Branch Registers) Act, 1900	The whole
1910 ..	IV	The Indian Companies (Amendment) Act, 1910	The whole

APPENDIX A.

PRIVATE COMPANIES.

Though the Indian Companies Act, 1913, is the first introduction to India of the "private company" as a legal entity, the term has been used for many years, both in England and in India, to designate in commercial phraseology a limited company which does not invite the public to subscribe for its shares. The legal status of such a company was that of a public company(*a*), and it had no special privileges under the Indian Companies' Act, 1882. In England the position of such a company was somewhat modified by the Companies Act, 1900 (63 & 64 Vict. c. 48) which exempted companies which did "not issue an invitation to the public to subscribe for shares" from the operations of the sections imposing restrictions on the appointment or advertisement of directors, and on the commencement of business The terminology of commerce came to be recognised by the courts and companies of this kind have on various occasions been described as private companies in reported judgments(*b*). In the year 1907, however, the legislature for the first time legalised the distinction between a public and a private company, which thenceforth, might consist of but two members(*c*), in lieu of the minimum of seven formerly required for the formation of any company. This provision was re-enacted in the following year by the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69, s. 121), the appropriate sections of which are reproduced in the Indian Companies Act, 1913.

Private Company means(*d*) a company which

(*i*) by its articles :—

(*a*) restricts the right to transfer its shares ; and

(*a*) *Sharp, Rickett* v. *Sharp*, 45 Ch D. 286, 290 ; *Lysaght* v *Lysaght*, (1898) 1 Ch 115, 122 ; *Trevor* v *Whiteworth*, 12 A C 409, 434

(*b*) *British Seamless Paper Box Co* 17 Ch D 467, 473 ; *Newman (George) & Co* (1895) 1 Ch 674, 685 , *Salomon* v *Salomon & Co* 1897, A. C. 22, 43 ; *Wragg, Ld.* (1897) 1 Ch. 796, 807 In, *in re White, Theobald* v. *White*, (1913) 1 Ch. 231, Neville J said that as regards the provisions of the Apportionment Act, 1870, the words "private company" were not conclusive, and that the phrase was only a convenient way of referring to a particular class of public companies for the purposes of the Companies (Consolidation) Act, 1908.

(*c*) Companies Act, 1907, (7 Edw 7, c. 50, s. 37).

(*d*) S. 2 (13).

(b) limits the numbers of its members (exclusive of persons who are in the employ of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and

(ii) continues to observe such restrictions, limitations, and prohibitions.

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member.

Liberty to form a private company with two members is granted by section 5 which states that any seven or more persons (or, where the company to be formed will be a private company any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Act in respect of registration, form an incorporated company, with or without limited liability.

From the foregoing two general propositions may be deduced: (a) The Act, as a whole, applies to private companies equally with public companies. But this general statement requires the very necessary qualification that certain important sections, to which detailed reference will be made hereafter, have been specially excepted from having any application to private companies, which thereby acquire privileges not granted to public companies. Since the scheme of the legislature has been to distinguish between public and private companies by the simple expedient of introducing appropriate exceptions into the Act, it follows that to any person familiar with ordinary company law and practice, whether from a commercial or legal point of view, the formation or working of a private company need present no particular difficulty. Such statutory duties as those imposed by section 31 of keeping a register of members, by section 104 of making a return of allotments, by section 77(a) of holding the statutory meeting, by section 78 of calling extraordinary meetings on requisition, by sections 109 and 123 of registering and keeping a register of mortgages, by section 130 of keeping proper books of account, by section 87 of keeping a register of directors and notifying changes to the registrar, by section 131 of making out

(a) *Gardner* v *Iredale*, (1912) 1 Ch 700 The object of the statutory meeting of a private company must be gathered from sub-sections 7, 8, and 9 of s. 77

a balance-sheet and having it audited by auditors appointed under section 144, in short, all statutory duties to be observed by public companies, except those from which a private company is specially exempt, have to be carried out by a private company, and the process of winding up is the same in the case of both public and private companies. In his commentary(*a*) Sir Francis Palmer points out that under section 105 of the Act private companies will be able to pay commissions to persons for subscribing, or underwriting, or placing sharers, since the earlier Statute has been modified so as to permit of such commissions being paid where shares are not offered to the public for subscription. But a recent case shows that the permission granted by the modification of the law is not without its qualifications. For it has been decided that this section applies to a private company, and that payment of commission to a director for taking shares himself and for procuring another to take shares is illegal unless and in so far only as it may be authorized by sub-section 1(*b*). From this it appears that if a private company wishes to pay commissions for procuring subscriptions or placing shares it must in addition to having the requisite authority in its articles, at least file with the registrar such a statement in lieu of prospectus disclosing the amount of rate per cent of the commission as it would have had to file had it been a public company. A private company cannot apparently maintain the secrecy as to its position afforded by its exemption from the operation of section 98 and at the same time pay commissions for underwriting, etc.

There is nothing in the Act to minimise the liability of directors for misfeasance under sec. 235 As has already been pointed out, before 1907 so-called "private" companies were constantly formed, the shares being substantially all held by a few persons, possibly all members of one family. Of such a company it was said, "It is true that this company was a small one, and what is called a private company, but its corporate capacity cannot be ignored. Those who form such companies obtain great advantages, but accompanied by some disadvantages. A registered company cannot do anything which all its members think expedient, and which apart from the law relating to incorporated companies they might lawfully do. An incorporated company's assets are

(*a*) Palmer's Company Law. 9th Edn, p. 363.

(*b*) *Dominion of Canada General Trading and Investment Syndicate* v. *Brigstocke*, (1911) 2 K. B. 648

its property and not the property of the shareholders for the time being; and, if the directors misapply those assets by applying them to purposes for which they cannot be lawfully applied by the company itself, the company can make them liable for such misapplication as soon as anyone properly sets the company in motion(*a*)." Notwithstanding the status now conferred upon private companies by Statute there is not a word of this passage which will not apply.

The obligation to forward a copy of its balance-sheet and statutory report annually to the registrar is an instance of the duties from the performance of which private companies are exempt.

(b) The second proposition is that the fact of a company being private and its status as such depend wholly in the first place, upon its articles, which must be carefully drawn so as to contain the essential clauses, and in the second place, upon the company continuing to observe the restrictions, limitations and prohibitions which the articles must contain(*b*). If a company's articles of association do not contain the restriction, limitation, and prohibition, stated in the definition clause the company cannot be a private company, if they do, it will not be a public company.

The mere fact of the number of the members of a company being less than seven, the minimum allowed in the case of a public company, will not give it the status of a private company. A company of less than seven members cannot be registered under the Act except as a private company, and unless the articles of such a company contain the clauses necessary to confer upon it the status of a private company, it will not be registered at all. The limitation which the articles of association must put to the number of members, and the prohibition against any invitation to the public to subscribe for shares or debentures are absolute and the definition clause leaves no margin for the ingenuity of the company draughtsman. But to what extent the right to transfer shares must be restricted in order to conform to the clause is not anywhere stated in the Act and there have been no decisions since the English Statute came into force as to what form of clause in the articles would or would not be a sufficient compliance with

(*a*) *Per* Lindley L. J. in *Newman (George) & Co.* (1895) 1 Ch. 674, 685.

(*b*) See form of Memorandum and Articles of Association of a Private Company on p. 356, *et seq.*

the section. A very usual method of restricting transfers is by giving either a right of pre-emption to the other shareholders or a right to veto transfers except to an approved transferee, such right being vested in and to be exercised by the directors or possibly by some particular director. Of the former method an instance, exemplifying also how the articles of association may provide for the ascertainment of the value of shares upon transfer, is to be found in *Borland's Trustee* v. *Steel Brothers & Co. Ltd.* (a) The articles of association of the defendant company provided that no share should, save as therein provided, be transferred to any person not being a manager or assistant so long as any manager or assistant should be willing to purchase the same at a fair value. The fair price for a share was limited to the par value which was to be deemed to be the amount paid up on such share, plus (a) a sum bearing the same ratio to the market-value of the investments of the reserve fund account of the company as the capital paid up on the share should bear to the total paid-up ordinary capital; (b) a sum equal to one quarter of a sum bearing the same ratio the company's "plant depreciation account" as the capital paid up on the shares should bear to the total paid-up capital, and (c) interest at 5 p.c. per annum on the total sum arrived at

Other methods of arriving at the price will suggest themselves, such as by inserting a provision in the articles that it shall be fixed by the company in general meeting or be based upon the average yearly dividend for a given number of years, or be adjusted according to a sliding scale, or even ascertained by arbitration. The articles may provide that the right of pre-emption shall be vested in certain particular shareholders or class of shareholders, or in the shareholders generally, but in proportion to their individual holdings. The articles may give a right to veto transfers either so long as the company continues in existence or for a limited number of years to a certain proportion of shareholders or to any particular shareholder, director or directors. These are merely instances of the restrictions on transfer which may be imposed by the articles and clauses dealing with any of the matters referred to may be devised to meet the requirements of any particular set of circumstances. If the company disregards in practice the articles framed to bring it within the definition and does not, in the language of the section, continue to observe the

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(a) (1901) 1 Ch. 279.

restrictions, limitations and prohibitions contained in its articles, it will cease to be a private company, for the essential clauses in the articles and a continued observance of them are both necessary to maintain the status of a private company. The English Act contains no penalty for disregarding the essential clauses, nor any prohibition against so doing, nor does it state that the company will thereupon cease to be a private company, or the consequences that will ensue upon such a course. Sir Francis Palmer expresses the opinion(*a*) that the company will not cease to be a private company because the directors allow free transfer or the number of members exceeds the prescribed limit, or the company invites the public to subscribe for shares, debentures or debenture-stock, a view which has been taken in a recent case(*b*). The learned authors refer to this as an oversight in drafting the Act. This is a deficiency which the Indian Legislature has remedied to a certain extent and how the Courts will deal with such a condition of affairs must depend very much upon the circumstances in which it arises and the nature of the proceeding which brings it to light.

Table *A* in Schedule I of this Act is primarily intended to apply to both public and private companies, but section 18 of the Act, in so far as it applies Table *A* to companies which do not exclude or modify its regulations, can have no application to private companies, since it is of the essence of a private company that its articles shall contain certain provisions already specified which necessarily find no place in Table *A*.

Any adaptation of Table *A* to the needs of a private company will, therefore, involve the insertion of such special provisions and in addition such further modifications as are involved by other provisions of the Act conferring privileges

(*a*) Palmer's Company Law, 9th Edn., p. 364.

(*b*) *Park v Royalties Syndicate Ld* (1912) 1 K. B. 330. Since the decision in this case an amending Act (The Companies Act 1913: 3 and 4 Geo. 5, cap. 25) has been passed, which provides that where a private company makes default in complying with any of the provisions in the articles required to be included in order to constitute the company a private company, the company shall cease to be entitled to the privileges and exemptions conferred upon private companies, though upon a proper application the Court may relieve the company from such consequences where such failure has been accidental or due to inadvertence or other sufficient cause. Under the same Act a private company has to send a certificate of compliance at the same time as the annual list of members and summary required to be sent under sec. 26 of the Act of 1908.

on private companies, and also any special clauses which the requirements of the company itself may necessitate(a).

Except for the special provisions required to bring a company within the definition clause the mere fact of a company being private will not of itself involve the insertion of any special clauses in its articles But the draughtsman should be careful to bear in mind that many clauses of articles of association which may be well adapted to a public company will be out of place among the articles of a private company. Clauses which in substance will be found among the articles of association of each kind of company probably will have to be differently drawn in the case of a private company in accordance with the intentions of the founders. Instances of such clauses are those relating to lien on and forfeiture of shares, increase of capital, borrowing powers, general meetings, directors and their powers, accounts, audit, and notices. Occasionally it may be deemed desirable to introduce clauses which in the case of a public company would be wholly unusual such as, for instance, provision for the compulsory retirement of members in certain eventualities: Provided they do not contravene the memorandum of association or any provision of the Act itself articles of association may be drawn to meet practically any set of circumstances and can be devised to give effect to the special requirements of any kind of commercial undertaking

Statutory Meeting and Report Within six months of the date when it is entitled to commence business, *i.e.*, the date of incorporation in the case of a private company, a company has, under section 77, to hold a general meeting of the company which is called the statutory meeting The section also provides for the forwarding to members and other persons entitled to receive it, and the filing with the registrar, of a report as to the position of the company So far as the section relates to holding the statutory meeting it applies to a private company, but its provisions as to the forwarding and filing of the statutory report do not so apply.

Directors.—Section 83A requires every company registered after the 1st April, 1914, to have at least two directors and section 83B makes provision for the appointment of directors. These sections do not apply to private companies, though no doubt in the majority of cases their requirements

(a) See form of Memorandum and Articles of Assocation of a private Company adopting Table A with modifications on p. 393 *et seq.*

will be voluntarily observed. Under section 84 restrictions are imposed on the appointment or advertisement of directors in the case of public companies. This section, which does not apply to a private company, aims at fixing directors with their qualification shares, if any, under the articles of association. That portion of the section which relates to the naming of a director in a prospectus necessarily has no applicability to a private company, since it is of the essence of a private company that it shall not invite the public to subscribe for its shares. In so far as a person appointed a director by the articles is concerned the conditions under which a private company is generally formed would themselves render the application of the section unnecessary.

Contracts by Agents.—The provisions of section 91D under which a manager or agent of a company who enters into a contract on behalf of the company as an undisclosed principal is liable to a penalty if he does make a memorandum in writing of the terms of the contract at the time of entering into it, have no application in the case of a private company.

Statement in lieu of prospectus.—Section 98, which requires companies which issue no prospectus on or with reference to formation, to file a statement in lieu of prospectus with the registrar before making any allotment of shares or debentures, does not apply to private companies. This exception also is a corollary of the prohibition against issuing any invitation to the public to subscribe.

But there is nothing to prevent a private company from filing such a statement. Indeed, if it pays commission for procuring subscriptions or placing shares within the meaning of section 105 it must do so or otherwise conform to the provisions of section 105(1), as such payment will be illegal unless and in so far only as it may be authorised by that sub-section(*a*)

Restriction as to allotment.—Section 101, sub-sections (*1*) to (*6*) impose certain restrictions as to allotment of share capital of a company offered to the public for subscription.

These sub-sections ordinarily will have no application to a private company, but as Sir Francis Palmer points out(*b*), they will apply if the company in contravention of its articles offers any of its shares to the public for subscription.

(*a*) *Dominion of Canada General Trading and Investment Syndicate* v. *Brigstocke*, (1911) 2 K. B. 648
(*b*) Palmer's Company Law, 9th Edn., 106.

Sub-section (7), which imposes restrictions in the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, does not apply to a private company.

Restrictions on commencement of business.—Under section 103 public companies may not commence business or exercise any borrowing powers unless, (1) the full minimum subscription has been allotted for payments made or to be made in cash, (2) directors have paid their proper proportion of the cash value of their shares, (3) the secretary or a director has filed with the registrar a declaration that such conditions have been complied with and (4) where the company does not issue a prospectus, a statement in lieu thereof has been filed.

These conditions do not apply to a private company, which is entitled to commence business immediately on its incorporation(*a*).

Balance-sheet.—Under section 131 the accounts of every company have to be audited every year and a balance-sheet made out in the form F in the third schedule. A copy of the balance-sheet has to be sent to every member of the company and to be deposited at the registered office for the inspection of members before the meeting at which it is to be laid before them. From this disclosure a private company is exempt, as it also is from that involved in the provision in section 134 requiring companies to file with the registrar a copy of the balance-sheet and auditor's report. The fear of having to disclose his financial position and dealings to the general public need be no deterrent to any one who contemplates taking advantage of the provisions of the Act to turn his business into a private company.

Auditors.—Under section 144 (3) every company must appoint an auditor or auditors at each annual general meeting. In the case of public companies, the choice of the company is limited by the Act to persons certified by the Local Government as entitled to act as auditors, or to members of any institution or association whose members the Governor-General in Council has by notification declared to be entitled so to act. No such limit is placed upon the selection of auditors by private companies. Though directors or officers of a private company or their partners may not be appointed its auditors the restriction does not extend to persons in the

(*a*) *Gardner* v *Iredale*, (1912) 1 Ch. 700, 711.

employment of directors or officers as it does in the case of a public company [section 144 (5) (iii)].

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.- The Act (section 146) gives to holders of preference shares and debentures in public companies the same right of receiving and inspecting balance-sheets, auditor's and other reports as the holders of ordinary shares enjoy. This is not the case as regards holders of preference shares and debentures in private companies, to which the section does not apply. This section, while negativing in the case of private companies the statutory right of inspection conferred upon holders of preference shares and debentures in public companies, leaves it open for the articles of association of a private company to make provision in regard thereto.

Liability for carrying on business with only one member.—For the first six months no liability is incurred if the company be reduced to only one member. But if at the end of that period the company continues to carry on business and the sole member is cognisant of the fact that there is no other member, he will incur the same liability as is incurred (under section 147) by the members of a public company whose numbers have fallen below the statutory minimum.

If the number of members is reduced below two, the company may be wound up by the Court(*a*), for which purpose in that event a contributory may present a petition(*b*)

Conversion of a private into a public company.—The conversion of a private into a public company is a simple operation. Section 154 of the Act provides one method.

Three things have to be done : (1) the company must pass a special resolution, (2) there must be filed with the registrar a statement in lieu of prospectus similar to that which had the company been a public company it would have had to file under section 98 before allotting any shares or debentures ; and (3) there must be filed with the registrar the statutory declaration which it would have had to file under section 103 before commencing business had the company been a public company. The section also states that a copy of the special resolution must be filed with the registrar, and to that extent repeats the provisions of section 82.

(*a*) S. 162(*iv*). (*b*) S. 166 (1) (*a*) (*i*).

The special resolution which the company must pass will delete the clause in the articles of association limiting the number of members to fifty, and may, if so desired, modify the restrictions on transfers of shares and the prohibition against issuing any invitation to the public to subscribe for shares or debentures. Another method is for the company merely to pass a special resolution altering its articles of association and thereby depriving itself of the characteristics of a private company which are essential under the Act; *i.e.*, by removing all restrictions on transfers of shares and the prohibition against issuing invitations to the public to subscribe for shares. This method no doubt is irregular and is described by Sir Francis Palmer(*a*) as a short cut, and is not to be recommended, but its mention at least affords a warning against injudicious tampering with the articles of association. In a recent case, moreover, which was, however, decided upon another point, Hamilton J. observed that a private company can only become a public company in the manner provided by the Statute(*b*). But, since under this Act in order to be private, a company must continue to observe the restrictions, limitations and prohibitions contained in the essential clauses in its articles, it would appear that a discontinuance of such observance will have the effect of converting it into a public company, "as a public company appears to be simply one which is not a private company, there is no intermediate state or *tertium quid*(*b*)." A third method is to sell the whole business of the company to a new public company. It is not necessary to enlarge upon this method of procedure which is one that is frequently adopted in the reconstruction of public companies.

Conversion of a public into a private company.

The Act does not provide for the conversion of a public into a private company. It can, however, be effected by the obvious expedient of winding up and selling the business of the public company to a new private company.

But, unless there is anything in the memorandum of association which entirely precludes it, another and simpler method may be adopted. A special resolution will have to be

(*a*) Palmer's Company Law, 9th Edn., p 371.
(*b*) *Park* v. *Royalties Syndicate, Ld* (1912) 1 K. B. 330, 343; *Quære*, whether this case would not have been decided otherwise under the Indian Companies Act, 1913, section 2 (13)

passed altering the company's articles so as to include in them such clauses as are in law essential to a private company which they do not already contain. They may already contain the necessary restriction on transfers of shares, and prohibition against the issue of any invitation to the public to subscribe for shares, but a clause limiting the number of members will have to be inserted. But the articles generally must be considered and all alterations consequential upon the proposed alteration of status of the company duly effected(*a*). This method of converting a public company into a private company, though not expressly recognised by the Act is in conformity with its provisions and has been frequently adopted(*b*).

Advantages of a private company.

The advantages of a private company which may not be at first apparent, may be briefly summarised.

The principal advantage is that of the limited liability of its members "Ordinary partnerships are by the law assumed and presumed to be based on the mutual trust and confidence of each partner in the skill, knowledge, and integrity of every other partner. As between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is the unlimited agent of every other in every matter connected with the partnership business, or which he represents as partnership business, and not being in its nature beyond the scope of the partnership A partner who may not have a farthing of capital left may take moneys or assets of the partnership to the value of millions, may bind the partnership by contract to any amount, may give the partnership acceptances for any amount, and may even—as has been shown in many painful instances in this Court—involve his innocent partners in unlimited amounts for frauds which he has craftily concealed from them(*c*)" This passage states the relation between partners in language not to be surpassed On the other hand, on the conversion of a business into a private company, the liability

(*a*) Palmer's Company Law, 9th Edn , p. 363.

(*b*) Laws of England, ed. by Lord Halsbury, vol. V, p. 73, where, in a footnote, it is stated that "the view, generally entertained in Lincoln's Inn, that a company registered as a public or *quasi* private company, by altering its articles so as to make them comply with the statutory requirements, can turn itself into a private company, has been frequently acted on."

(*c*) *Per* James L J. in *Baird's case*, 5 Ch. 725, 733.

of each shareholder will be strictly limited to the nominal value of his shares. Or again a man may be invited to participate in a highly speculative venture, involving the possibility of considerable loss. He may be reluctant to do so on the basis of an ordinary parntership though he is willing to risk liability for a certain definite sum This he can do with ease under the Act, and with the certain knowledge that his liabilities will not exceed the sum invested.

The rule that directors are limited agents of a company confers a further advantage. A partner in a firm has implied authority to do whatever is necessary to carry on the business in the usual way, and the firm will be bound to all persons who deal with him *bonâ fide* without notice of any restriction upon his authority(*a*). But according to a well-known rule all persons dealing with a company are deemed to have knowledge of the contents of its memorandum and articles of association, and if a director enters into transactions beyond the scope of the company or beyond his authority as therein defined, the company will not be liable Upon a business being converted into a company a continuity is ensured which in the case of partnership firms is unattainable *Primâ facie* on the death of a partner the partnership is dissolved. But where one of the principal shareholders or a founder of a private company dies, his shares will form part of his estate and be dealt with by his legal representatives in accordance with the directions contained in his will, or according to the law of succession should he have died intestate. In such a case the articles may give a right of pre-emption to other specified shareholders, but such a consideration will not affect the principle under illustration.

The formation of private companies may solve difficulties frequently encountered when local partnerships are concerned. Large trading firms establish branches in different sea-ports with partners whose interests are confined to particular branches. The difficulties involved in such arrangements are not insuperable, but they can be simplified by the formation of private companies with local managers and directors common to all, or with such other arrangements as the exigencies of the situation may require.

It is furthermore possible that the members of joint families may appreciate the advantages of limited liability,

(*a*) Lindley on Partnership, 7th Edn., p. 197.

and by converting their businesses into private companies, at the same time adapt themselves to modern usage.

The facilities for borrowing and raising capital open to public companies apply equally to private companies. Loans upon mortgage of uncalled capital, debentures and debenture stock transferable in the open market afford means of financing business operations impossible to an ordinary partnership The absence of some of the disadvantages attendant upon the formation and conduct of a company is ensured to private companies by those sections of the Act conferring exemptions to which reference has already been made in detail.

This branch of the law is still in its infancy in the United Kingdom, in India its existence as yet is hardly realised. In the course of years, no doubt, volumes of decisions will circumscribe and explain it, but for the present any but the most elementary commentary can be but speculative.

APPENDIX B.

Form of Memorandum and Articles of Association of a Private Company as defined by Section 2 (13) of the Indian Companies Act, 1913

THE INDIAN COMPANIES ACT, 1913.

COMPANY LIMITED BY SHARES.

MEMORANDUM OF ASSOCIATION*

OF

LIMITED

1. The name of the Company is "

LIMITED."

2. The registered office of the Company will be situate in ....

Objects

3. The objects for which the Company is established are—

Carry into effect agreement.

(*a*) To enter into and carry into effect with such (if any) modifications or alterations as may be agreed

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upon, an agreement already prepared and expressed to be made between of the one part and this Company of the other part, a draft of which has been subscribed with a view to identification by

(b) To carry on the business of mentioned in the said agreement (being the business formerly carried on by the said under the style of "Messrs & Co" at No), and any other trade or business whatsoever which can, in the opinion of the Company, be advantageously or conveniently carried on by the Company by way of extension of or in connection with such business, or is calculated directly or indirectly to develop any branch of the Company's business or to increase the value of or turn to account any of the Company's assets, property or rights* — **Carry on the business proposed to be acquired.**

(c) To acquire from time to time and to manufacture and deal in all such stock-in-trade, goods, chattels and effects as may be necessary or convenient for any business for the time being carried on by the Company. — **Acquire stock-in-trade, &c.**

(d) To acquire and take over the whole or any part of the business, property and liabilities of any person or persons, firm or corporation, carrying on any business which this Company is authorised to carry on or possessed of any property or rights suitable for the purposes of this Company. — **Acquire other business or property.**

(e) To take or otherwise acquire and hold shares, stock, debentures or other interests in any other company having objects altogether or in part similar to those of this Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company. — **Acquire shares in other companies**

* Very commonly additional clauses are added, giving to the Company power to carry on various specified business. This is sometimes convenient, though Clause (b) would as a rule suffice.

Acquire lands, property, rights and privileges, and construct buildings.

(*f*) To purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property, patents, licences, rights or privileges which the Company may think necessary or convenient for the purposes of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purposes of the Company.

Borrow money, mortgage undertaking

(*g*) To borrow or raise or secure the payment of money by mortgage, or by the issue of debentures or debenture stock, perpetual or otherwise, or in such other manner as the Company shall think fit, and for the purposes aforesaid to charge all or any of the Company's property or assets, present and future including its uncalled capital, and collaterally or further to secure any securities of the Company by a trust-deed or other assurance.

Make and accept bills, &c.

(*h*) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, hundis, bills of lading, warrants, debentures and other negotiable or transferable instruments.

Grant pensions and subscribe to charities.

(*i*) To grant pensions, allowances gratuities and bonuses to employés or ex-employés of the Company or its predecessors in business or the dependants of such persons, and to support or subscribe to any charitable or other institutions clubs, societies or funds.

Lend.

(*j*) To lend money on any terms that may be thought fit, and particularly to customers or other persons having dealing with the Company

Enter into partnership.

(*k*) To enter into any partnership or arrangement in the nature of a partnership with any person or persons or corporation engaged or interested or about to become engaged or interested in the carrying on or conduct of any business or enterprise which this Company is authorised to carry on or conduct or from which this Company would or might derive any benefit, whether direct or indirect

Sell or otherwise deal with undertaking.

(*l*) To sell or dispose of the undertaking of the Company or any part thereof in such manner and for such consideration as the Company may think

fit, and in particular for shares (fully or partly paid up), debentures, debenture stock or securities of any other company, whether promoted by this Company for the purpose or not, and to improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

(*m*) To distribute any of the Company's property among the members *in specie*. **Distribute assets in specie**

(*n*) To do all or any of the above things in any part of the world, and either as principals, agents, trustees or otherwise, and either alone or in conjunction with others, and by or through agents, sub-contractors, trustees or otherwise **Act as and through agents, trustees, &c.**

(*o*) To do all such other things as are incidental or the Company may think conducive to the attainment of the above objects or any of them. **Generally do all things conducive to above**

4 The liability of the members is limited. **Liability of members**

5 The share capital of the Company is Rs. divided into (*a*) shares of Rs. each, of which are preference shares and are ordinary shares Subject as hereinafter mentioned, the holders of the said preference shares are to be entitled to the rights attached thereto by the Articles of Association registered herewith, but no further or other rights. Subject and without prejudice to the rights for the time being attached to the said preference shares, any of the shares in the capital of the Company for the time being may be issued with or subject to any preferential, deferred or other special rights, privileges, conditions or restrictions, whether in regard to dividend, voting, return of capital or otherwise. **Capital of Company.**

The rights of the holders of the said preference shares, or of any other class of shares for the time being forming part of the capital of the Company, may be modified, affected, varied, extended or surrendered with the sanction of an Extraordinary Resolution of the members of the class, as

(*a*) If it is not proposed to issue preference shares in the first instance this clause may run :—

"The share capital of the Company is Rs divided int shares of Rs. each. The shares in the original or any increased capital may be divided into several classes and there may be attached thereto respectively any preferential, deferred or other special rights, privileges, conditions or restrictions."

provided by the Articles of Association(*a*) registered here with, but not further or otherwise.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names

(NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS (*b*)	Number of Shares taken by each Subscriber

Dated the day of 191 .

Witness to the above Signatures

(*a*) The particular Article here referred to is Article 55 It is, perhaps, safer not to refer to the Article here by number in case the numbering of the articles is altered and the consequential alteration requires here overlooked.

(*b*) In the case of a " Private " Company (as defined in s 2 (13) of the (Act of 1913), it will be sufficient to insert here the names, &c., of two subscribers only

COMPANY LIMITED BY SHARES.

ARTICLES OF ASSOCIATION.*

OF

LIMITED.

Table A Excluded.

1. The regulations in Table A in the First Schedule to the Indian Companies Act, 1913, shall not apply to the Company, except so far as the same are repeated or contained in these Articles. **Table A excluded.**

Interpretation.

2. In these Articles the words standing in the first column of the table next hereinafter contained shall bear the meanings set opposite to them respectively in the second column thereof, if not inconsistent with the subject or context— **Interpretation clause.**

WORDS.	MEANINGS	
The Statutes ..	The Indian Companies Act, 1913, and every other Act for the time being in force concerning joint-stock companies and affecting the Company.	**Definitions.**

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These Articles	..	These Articles of Association as originally framed or as altered from time to time by Special Resolution.
The Directors	..	The Directors for the time being of the Company.
The Office	..	The registered office for the time being of the Company.
The Seal	..	The common seal of the Company.
Month	..	Calendar month
Year	..	Year from the 1st January to the 31st December inclusive

Writing shall include printing and lithography and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular number only shall include the plural number, and *vice versâ*

Words importing the masculine gender only shall include the feminine gender, and

Words importing persons shall include corporations.

Expression in statutes to bear same meaning in Articles

Subject as aforesaid, any words or expressions defined in the statutes shall, except where the subject or context forbids, bear the same meanings in these Articles

Vendors' agreement

Company to enter into agreement described in Memorandum of Association.

3. The Company shall, as speedily as possible after the incorporation of the Company, enter into an agreement under the seal with

in the terms of the agreement referred to in the Memorandum of Association, with such (if any) modifications or alterations as may be agreed upon, whether before or after the execution thereof, and shall carry the same into effect and execute and obtain the execution of all deeds and documents requisite for vesting in the Company the premises thereby agreed to be sold and purchased. It is hereby expressly declared that the validity of the said agreement shall not be impeached on the ground that any of the vendors, as a promoter, Director or otherwise, stands in a fiduciary relation to the Company, and every person who shall at any time become a member

of the Company shall be deemed to approve and confirm the said agreement.

Shares

(a)4. [The initial capital of the Company is divided into [preference] shares of Rs. each [and ordinary] shares of Rs each The holders of the said preference shares will be entitled to a fixed cumulative preferential dividend of per cent. per annum on the capital paid up or credited as paid up thereon, and in a winding up to repayment of capital in priority to all other shares for the time being forming part of the capital of the Company, but to no other right of participation either in profits or assets.] Initial capital.

5. The shares taken by the subscribers to the Memorandum of Association and those to be allotted pursuant to the above mentioned agreement shall be duly issued by the Directors. Subject as aforesaid the shares shall be under the control of the Directors who may allot and issue the same (subject always to Articles 6 and 53 hereof) to such persons on such terms and conditions and at such times as the Directors think fit. How shares to be issued.

(b)6. The Company is a Private Company, and accordingly (A) no invitation shall be issued to the pubic to No shares, debentures or debenture stock to be offered to the public.

(a) This Article will be modified or omitted if there are no preference shares.

(b) See section 2 (13) of the Indian Companies Act, 1913 A private Company which does not object to filing with the registrar a "statement in the prescribed form" should take the express power given by section 105 of the Act by an Article which might be expressed as follows .—

"The Company may pay to any person a commission in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company: Provided that such commisson shall not exceed per cent of the nominal amount of such shares or an amount equivalent to such percentage; and the requirements of sections 105 and 106 of the Indian Companies Act, 1913, shall be observed"

Section 107 of the Indian Companies Act, 1913, also enables a Company to take by its Articles the following power, if so desired :—

"Where any shares are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the Company may pay interest on so much of such share capital as is for the time being paid up for the period and subject to the conditions and restrictions mentioned in section 107 of the Indian Companies Act, 1913, and may charge the same to capital as part of the cost of the construction of the works, building or plant."

subscribe for any shares or debentures or debenture stock of the Company; (*B*) the number of the members of the Company (exclusive of persons in the employment of the Company) shall be limited to fifty, provided that, for the purposes of this provision, where two or more persons hold one or more shares in the Company jointly they shall be treated as a single member; and (*C*) the right to transfer the shares of the Company shall be restricted in manner hereinafter appearing.

Receipts of joint holders of shares.

7. If two or more persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividends or other moneys payable in respect of such share.

No trust recognized.

8. No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or required to recognise any equitable, contingent, future or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder except as by these Articles otherwise expressly provided or as by statute required or pursuant to any order of Court

Registered member entitled to share certificate

9. Every member shall be entitled, without payment, to receive within two months after allotment or registration of transfer (unless the conditions of issue provide for a longer interval) one certificate under the seal for all the shares registered in his name, specifying the number and denoting numbers of the shares in respect of which it is issued and the amount paid up thereon: provided that in the case of joint holders the Company shall not be bound to issue more than one certificate to all the joint holders, and delivery of such certificate to any one of them shall be sufficient delivery to all. Every certificate shall be signed by one Director and countersigned by the Secretary or some other person nominated by the Directors for the purpose

New certificate may be issued.

10. If any share certificate shall be defaced, worn out, destroyed or lost, it may be renewed on such evidence being produced and such indemnity (if any) being given as the Directors shall require, and (in case of defacement or wearing out) on delivery up of the old certificate, and in any case on payment of such sum not exceeding one rupee as the Directors may from time to time require.

Lien.

11. The Company shall have a first and paramount lien upon all shares (whether fully paid or not) registered in the name of any member, either alone or jontly with any other person, for his debts, liabilities and engagements, whether solely or jointly with any other person, to or with the Company, whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends from time to time declared in respect of such shares But the Directors may at any time declare any share to be exempt, wholly or partially from the provisions of this Article. **Company to have lien on shares and dividends.**

12 The Directors may sell the shares subject to any such lien at such time or times and in such manner as they think fit, but no sale shall be made until such time as the moneys in respect of which such lien exists or some part thereof are or is presently payable or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged, and until a demand and notice in writing stating the amount due or specifying the liability or engagement and demanding payment or fulfilment or discharge thereof and giving notice of intention to sell in default shall have been served on such member or the persons (if any) entitled by transmission to the shares, and default in payment, fulfilment or discharge shall have been made by him or them for seven days after such notice **Lien may be enforced by sale of shares**

13 The net proceeds of any such sale shall be applied in or towards satisfaction of the amount due to the Company, or of the liability or engagement, as the case may be, and the balance (if any) shall be paid to the member or the person (if any) entitled by transmission to the shares so sold. **Application of proceeds of sale.**

14. Upon any such sale as aforesaid the Directors may enter the purchaser's name in the register as holder of the shares and the purchaser shall not be bound to see to the application of the purchase-money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. **Directors may enter purchaser's name in share register.**

15. No member shall be entitled to receive any dividend or to exercise any privilege as a member until he shall have paid all calls for the time being due and payable on every share held by him, whether alone or jointly with any other person, together with interest and expenses (if any). **Member not entitled to privileges of membership until all calls paid.**

Calls on Shares.

Directors may make calls.

Fourteen days' notice to be given.

16. The Directors may, subject to the provisions of these Articles, from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that fourteen days' notice at least is given of each call, and each member shall be liable to pay the amount of every call so made upon him to the persons, by the instalments (if any), and at the times and places appointed by the Directors.

When call deemed made.

17. A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

Liability of joint holders.

18. The joint holders of a share shall be jointly and severally liable to the payment of all calls and instalments in respect thereof.

Interest on unpaid call.

19. If before or on the day appointed for payment thereof, a call or instalment payable in respect of a share is not paid, the holder or allottee of the share shall pay interest on the amount of the call at such rate not exceeding 12 per cent. per annum as the Directors shall fix from the day appointed for payment thereof to the time of actual payment, but the Directors may waive payment of such interest wholly or in part.

Sums payable on allotment deemed a call.

20. Any sum which by the terms of allotment of a share is made payment upon allotment or at any fixed date whether on account of the amount of the share or by way of premium, shall, for all purposes of these Articles, be deemed to be a call duly made and payable on the date fixed for payment, and in case of non-payment the provisions of these Articles as to payment of interest and expenses, forfeiture and the like, and all other the relevant provisions of these Articles, shall apply as if such sum were a call duly made and notified as hereby provided.

Difference in calls.

21. The Directors may, from time to time, make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls.

Calls may be paid in advance.

22. The Directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon his shares beyond the sums actually called up thereon, and upon the moneys so paid in advance, or so much thereof as exceeds the amount for the time being

called up on the shares in respect of which such advance has been made, the Directors may pay or allow such interest as may be agreed between them and such member, in addition to the dividend payable upon such part of the share in respect of which such advance has been made as is actually called up

Transfer of Shares.

23. Subject to the restrictions of these Articles(*a*), shares shall be transferable, but every transfer must be in writing in the usual common form, or in such other form as the Directors shall from time to time approve, and must be left at the office, accompanied by the certificate of the shares to be transferred and such other evidence (if any) as the Directors may require to prove the title of the intending transferor. **Shares to be transferable.**

24. Any share may be transferred at any time by a member to his or her father or mother, or to any lineal descendant of such father or mother, or to his or her wife or husband; and any share of a deceased member may be transferred by his executors or administrators to the widow or widower or any such relative as aforesaid of such deceased member, being a *cestui que trust* or specific legatee thereof, and shares standing in the name of any deceased member may be transferred or placed in the names of the trustees of his will, and upon any change of trustees may be transferred to the trustees for the time being of such will. A share may at any time be transferred to any member of the Company. **Transfer of shares to member of family.**

25. No share shall in any circumstances be transferred to any infant, insolvent or person of unsound mind. **Persons under disability.**

(*b*)26. Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the Company so long as any member is willing to purchase the same at the fair value, which shall be determined as hereinafter provided. **Shares to be offered to Members.**

27. In order to ascertain whether any member is willing to purchase a share at the fair value, the person, whether a member of the Company or not, proposing to transfer the same (hereinafter called "the retiring member") shall give **Notice of desire to sell.**

(*a*) See the notes on pages 345, 346, as to restrictions on the transfer of shares.

(*b*) In Private Companies it is generally thought desirable to give existing members a right of pre-emption of any shares proposed to be sold, on terms which are fair to both parties.

a notice in writing (hereinafter described as a "sale-notice") to the Company that he desires to sell the same. Every sale-notice shall specify the denoting numbers of the shares which the retiring member desires to sell, and shall constitute the Company the agent of the retiring member for the sale of such shares to any member of the Company at the fair value. No sale-notice shall be withdrawn except with the sanction of the Directors.

Company to find purchaser.

28 If the Company shall within twenty-eight days after service of a sale-notice find a member willing to purchase any share comprised therein (hereinafter described as a "purchasing member") and shall give notice thereof to the retiring member, the retiring member shall be bound upon payment of the fair value to transfer the share to such purchasing member, who shall be bound to complete the purchase within seven days from the service of such last-mentioned notice. The Directors shall, with a view to finding a purchasing member, offer any shares comprised in a sale-notice to the existing members of the Company (other than the retiring member) as nearly as may be in proportion to their holdings of shares in the Company, and shall limit a time within which such offer if not accepted will be deemed to be declined, and the Directors shall make such arrangements as regards the finding of a purchasing member for any shares not accepted by a member to whom they shall have been so offered as aforesaid within the time so limited as they shall think just and reasonable.

Sale-price to be fixed by Company

29. At the Ordinary General Meeting in each year the Company shall by resolution fix the price at which the shares of each class for the time being forming part of the capital of the Company may be purchased in pursuance of a sale-notice. The price to be so fixed shall in the case of each such class be not less than such a sum as, having regard to the dividends declared by the Company in the three last preceding years, or such less period as shall have elapsed since the first issue of any shares of that class, would give an average return of 6 per cent per annum thereon. The sum fixed as aforesaid at the Ordinary General Meeting last preceding the service of a sale-notice shall, for the purposes of Articles 26, 27, and 28, be deemed to be the fair value of any share comprised in such notice. Until the fair value has been fixed as herein provided, a sum equal to the capital paid up on any share shall be deemed to be the fair value of such share.

30. In the event of the retiring member failing to carry out the sale of any shares which he shall have become bound to transfer as aforesaid, the Directors may execute a transfer in his name and may give a good receipt for the purchase-price of such shares, and may register the purchasing member as holder thereof and issue to him a certificate for the same, and thereupon the purchasing member shall become indefeasibly entitled thereto. The retiring member shall in such case be bound to deliver up his certificate for the said shares, and on such delivery shall be entitled to receive the said purchase-price without interest, and if such certificate shall comprise any shares which he has not become bound to transfer as aforesaid the Company shall issue to him a balance certificate for such shares.

Company may complete sale if retiring member make default.

31. If the Directors shall not, within the space of twenty-eight days after service of a sale-notice, find a purchasing member for all or any of the shares comprised therein and give notice in manner aforesaid, or if, through no default of the retiring member, the purchase of any shares in respect of which such last-mentioned notice shall be given shall not be completed within twenty-one days from the service of such notice, the retiring member shall, at any time within six months thereafter, be at liberty, subject to Article 34 hereof, to sell and transfer the shares comprised in his sale-notice (or such of them as shall not have been sold to a purchasing member) to any person and at any price.(a)

If Company does not find purchaser member may sell as he pleases within six months.

(a) An alternative scheme to that embodied in Articles 26 to 31, under which the retiring member has to name his own price, and if a member is not found willing to buy at that price may sell to any person at a price not less than that named by him is contained in the following clauses :—

27 Save as hereinbefore provided no share shall be transferred until the same shall have been first offered for sale in manner hereinafer provided or otherwise than in accordance with the following provisions.

28 Any person, whether a member of the Company or not, who proposes to transfer any shares otherwise than in accordance with Article 25 (hereinafter called "the retiring member") shall give notice in writing (hereinafter called a "sale-notice") to the Company that he desires to transfer the same. Every sale-notice shall specify the denoting members of the shares which the retiring member desires to transfer, and the price at which he is writing to sell the same. A sale-notice shall constitute the Directors the agents of the retiring member for the sale of any shares comprised therein at the price specified therein to any holder of shares of the Company. No sale-notice shall be withdrawn ecxept with the sanction of the Directors.

29. If the Directors shall, within the space of twenty-eight days after service of a sale-notice, find a holder of shares willing to purchase any share comprised therein at the price named therein (hereinafter called a "purchasing member"), and shall give notice thereof to the retiring

Transfers to be executed by both parties.

32. The instrument of transfer of a share shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

Company to provide and Secretary to keep register.

33. The Company shall provide a book to be called the "Register of Transfers" which shall be kept by the Secretary under the control of the Directors, and in which shall be entered the particulars of every transfer or transmission of every share.

Directors may refuse to register in certain cases.

(*a*)34. The Directors may, in their discretion, refuse to register the transfer of any share to any person whom it shall in their opinion be undesirable in the interests of the Company to admit to membership, but such right of refusal shall not be exercisable in the case of any transfer made pursuant to Article 24, except for the purpose of ensuring that the number of members does not exceed the limit prescribed by Article 6 The Directors may refuse to register any transfer of shares on which the Company has a lien.

Transfer fee.

35. Such fee, not exceeding Rupees for each transfer, as the Directors may from time to time determine, may be charged for registration of a transfer.

member, the retiring member shall be bound, upon payment of the price so named, to transfer the share to such purchasing member, who shall be bound to complete the purchase within seven days from the expiration of such last-mentioned notice.

29A. The Directors shall, with a view to finding a purchasing member, offer any shares comprised in a sale-notice in the first instance to the existing holders of shares of the Company (other than the retiring member) in proportion as nearly as may be to their holdings of shares, and shall limit a time within which such offer may be accepted; and the Directors shall make such regulations as regards the finding of a purchasing member for any shares not accepted by a member to whom they shall have been so offered within the time so limited as aforesaid as they shall think just and reasonable.

31. At the end of this clause after the word "price" must be added the words "not being less than the price named in such sale-notice."

It may be desired to let the auditor or the Company in general meeting decide the fair value of a share, or to have it fixed by reference to the amount paid up and to past dividends. For forms of clauses, see Palmer's Company Precedents, 11th Ed, Pt I, pp 962—969.

(*a*) Taken by itself, this Article might perhaps not be held a sufficient compliance with the requirement that a "Private Company" under the Act of 1913 must by its Articles restrict the right to transfer its shares. The more stringent Article often inserted in its place empowering the Directors to veto any transfer without assigning any reason would no doubt be sufficient.

36. The register of transfers shall be closed during the fourteen days immediately preceding every Ordinary General Meeting of the Company, and at such other times (if any) and for such period as the Directors may from time to time determine, provided always that it shall not be closed for more than thirty days in any year.

Register of transfers may be closed.

Transmission of Shares

37. In the case of the death of a member, the survivors or survivor, where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to his shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

On death of member, survivor or executor only recognised.

38. Any person becoming entitled to a share in consequence of the death or insolvency of any member may, upon producing such evidence of title as the Directors shall require, with the consent of the Directors, be registered himself as holder of the share, or subject to the provisions as to transfers herein contained, transfer the same to some other person.

Person becoming entitled on death or bankruptcy of member may be registered.

39. A person entitled to a share by transmission shall be entitled to receive, and may give a discharge for, any dividends or other moneys payable in respect of the share, but he shall not be entitled in respect of it to receive notices of, or to attend or vote at meetings of the Company, or, save as aforesaid, to exercise any of the rights or privileges of a member, unless and until he shall have become a member in respect of the share.

Person entitled may receive dividends without being registered as member, but may not vote.

Compulsory Retirement.

40. The Company may at any time by Extraordinary Resolution resolve that any holder of ordinary shares other than a Director or a person holding more than 10 per cent. of the ordinary shares of the Company do transfer his ordinary shares. Such members shall thereupon be deemed to have served the Company with a sale-notice in respect of his ordinary shares in accordance with Article 28 hereof, and all the ancillary and consequential provisions of these Articles shall apply with respect to the completion of the sale of the said shares. Notice in writing of such resolution shall be given to the member affected thereby. For the purpose of this Article any person entitled to transfer an ordinary

Compulsory retirement.

share under Article 38 hereof shall be deemed the holder of such share.

Restriction on Members.

Members not to carry on competitive business.

(*a*)41. No member of the Company shall, without the consent in writing of all the Directors, be employed or concerned or interested in or assist in carrying on any business in competition with the Company, or having interests inconsistent with those of the Company, within miles of the office or of any premises upon which the Company may for the time being be carrying on business otherwise than as a holder of shares or debentures in a company.

Forfeiture of Shares.

Directors may require payment of call with interest and expenses.

42. If any member fails to pay the whole or any part of any call or instalment of a call on or before the day appointed for the payment thereof, the Directors may at any time thereafter, during such time as the call or instalment or any part thereof remains unpaid, serve a notice on him or on the person entitled to the share by transmission requiring him to pay such call or instalment, or such part thereof as remains unpaid, together with interest at such rate not exceeding 12 per cent. per annum as the Directors shall determine, and any expenses that may have accrued by reason of such non-payment.

Notice requiring payment to contain certain particulars

43. The notice shall name a further day (not earlier than the expiration of seven days from the date of the notice) on or before which such call or instalment or such part as aforesaid, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made, and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

On non-compliance with notice shares forfeited on resolution of Directors.

44. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. A forfeiture of shares shall include all dividends in respect of the shares not actually paid before the forefeiture, notwithstanding that they shall have been declared.

(*a*) This clause would appear to be of doubtful validity in India, having regard to section 27 of the Indian Contract Act, 1872.

45. When any share has been forfeited in accordance with these Articles, notice of the forfeiture shall forthwith be given to the holder of the share or to the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given, and of the forfeiture with the date thereof, shall forthwith be made in the register of members opposite to the share; but the provisions of this Article are directory only, and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.

Notice of forfeiture to be given and entered in register of members.

46. Notwithstanding any such forfeiture as aforesaid, the Directors may, at any time before the forfeited share has been otherwise disposed of, annul the forfeiture, upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share and upon such further terms (if any) as they shall see fit.

Directors may allow forfeited share to be redeemed.

47. Every share which shall be forfeited shall thereupon become the property of the Company, and may be either cancelled or sold or re-allotted, or otherwise disposed of, either to the person who was before forfeiture the holder thereof, or entitled thereto, or to any other person, upon such terms and in such manner as the Directors shall think fit.

Shares forfeited belong to Company.

48. A shareholder whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls made and not paid on such shares at the time of forfeiture, and interest thereon to the date of payment, in the same manner in all respects as if the shares had not been forfeited, and to satisfy all (if any) the claims and demands which the Company might have enforced in respect of the share at the time of forfeiture, without any deduction or allowance for the value of the shares at the time of forfeiture.

Holders of forfeited shares liable for call made before forfeiture.

49 The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share, and all other rights and liabilities incidental to the share as between the shareholder whose share is forfeited and the Company, except only such of those rights and liabilities as are by these Articles expressly saved, or as are by the statutes given or imposed in the case of past members.

Consequences of forfeiture.

50. A duly verified declaration in writing that the declarant is a Director of the Company, and that a share has been duly forfeited in pursuance of these Articles, and stating the

Title to forfeited share.

date upon which it was forfeited, shall, as against all persons claiming to be entitled to the share adversely to the forfeiture thereof, be conclusive evidence of the facts therein stated, and such declaration, together with the receipt of the Company for the consideration (if any) given for the share on the sale or disposition thereof, and a certificate of proprietorship of the share under the seal delivered to the person to whom the same is sold or disposed of, shall constitute a good title to the share, and such person shall be registered as the holder of the share and shall be discharged from all calls made prior to such sale or disposition, and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any act, omission or irregularity relating to or connected with the proceedings in reference to the forfeiture, sale, re-allotment or disposal of the share

Alterations of Capital.

Company may alter its capital in certain ways.

51. The Company may so far alter the conditions of its Memorandum of Association as by Ordinary Resolution—

(*a*) to consolidate and divide its capital into shares of larger amount than its existing shares, or

(*b*) to cancel any shares not taken or agreed to be taken by any person ;

and by Special Resolution—

(*c*) to divide its capital or any part thereof into shares of smaller amount than is fixed by its Memorandum of Association by sub-division of its existing shares or any of them, subject nevertheless to the provisions of the statutes(*a*), and so that as between the holders of the resulting shares, one or more of such shares may by the resolution by which such sub-division is effected be given any preference or advantage as regards dividend, capital, voting or otherwise over the others, or any other of such shares, or

(*d*) to reduce its capital in any manner authorised and subject to any conditions prescribed by the statutes(*b*).

(*a*) See section 50 of the Indian Companies Act, 1913.
(*b*) See sections 55 to 65 of the Indian Companies Act, 1913.

Increase of Capital.

52. The Company may from time to time, whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not, by Extraordinary Resolution increase its capital by the creation and issue of new shares, such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the Company by the resolution authorising such increase directs. **Compan may increase its capital**

53. Unless otherwise determined by the Directors or by the resolution authorising an increase of capital, any original shares for the time being unissued, and any new shares from time to time to be created, shall, before they are issued, be offered to the members in proportion, as nearly as may be, to the number of shares held by them. Such offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may, subject to these Articles, dispose of the same in such manner as they think most beneficial to the Company. The Directors may, in like manner, dispose of any such new or original shares as aforesaid which, by reason of the proportion borne by them to the number of persons entitled to such offer as aforesaid or by reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered in manner hereinbefore provided. **Unissued and new shares to be first offered to members unless otherwise determined.**

54. Except so far as otherwise provided by the conditions of issue, any capital raised by the creation of new shares shall be considered as part of the original ordinary share capital of the Company, and shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the original share capital. **New shares to be ordinary capital unless otherwise provided.**

Modification of Class Rights.

55. All or any of the rights, privileges or conditions for the time being attached or belonging to any class of shares for the time being forming part of the capital of the Company may from time to time be modified, affected, varied, extended or surrendered in any manner with the sanction of an Extra- **Rights of shareholders may be altered.**

ordinary Resolution passed at a separate General Meeting of the members of that class. To any such General Meeting all the provisions of these Articles shall *mutatis mutandis* apply, but so that the necessary quorum shall be members of the class holding or representing by proxy one-third(*a*) of the capital paid or credited as paid on the issued shares of the class(*b*).

General Meetings.

Statutory Meeting

56. The Statutory General Meeting shall be held at such time within a period of six months from the incorporation of the Company, and at such place, as the Directors may determine. The provisions of section 77 of the Indian Companies Act, 1913, in relation to such meeting (so far as they affect the Company) shall be observed by the Directors.

Subsequent General Meetings.

57 Subsequent General Meetings shall be held once in every year, at such time and place as may be determined by the Directors, but so that not more than fifteen months shall be allowed to elapse between any two Annual General Meetings(*c*).

Ordinary and Extraordinary Meetings.

58. The abovementioned General Meetings shall be called Ordinary Meetings. All other General Meetings shall be called Extraordinary.

Directors may call Extraordinary Meeting.

59. The Directors may call an Extraordinary Meeting whenever they think fit.

Members may requisition Directors to call Extraordinary Meeting.

(*d*) 60. The Directors shall call an Extraordinary Meeting whenever a requisition in writing, signed by members of the Company holding in the aggregate not less than one-tenth in amount of the issued capital of the Company [or (in the event of the dividend on the preference shares being in arrear) not less than one-tenth in amount of the issued preference shares of the Company] upon which all calls or other sums then due shall have been paid up, and stating fully the objects

(*a*) This quorum may, of course, be increased or reduced. One-third is the quorum given in Table A, cl. 4, but a smaller quorum is often thought sufficient.

(*b*) See clause 5 of the Memorandum of Association.

(*c*) See section 76 of the Indian Companies Act, 1913.

(*d*) This and the two succeeding Articles are practically a transcript of section 78 of the Indian Companies Act, 1913. The words in brackets give the preference shareholders a privilege which may be useful.

of the meeting, shall be deposited at the office. Such a requisition may consist of several documents in like form, each signed by one or more requisitionists.

61. If the Directors do not proceed to call a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves call the meeting, but any meeting so called shall not be held after three months from the date of such deposit. **If Directors neglect to call meeting requisitionists may call it.**

62. If at any such meeting a resolution requiring confirmation at another meeting is passed, the Directors shall forthwith call a further Extraordinary General Meeting for the purpose of considering the resolution and, if thought fit of confirming it as a Special Resolution, and if the Directors do not call such further meeting within seven days from the date of the passing of the first resolution the requisitionists, or a majority of them in value, may themselves call the meeting. All meetings called by requisitionists under this or the preceding Article shall be called in the same manner as nearly possible as that in which meetings are to be called by the Directors **Directors must convene confirmatory meeting or requisitionist may call it in case of neglect.**

63. Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in the case of special business the general nature of such business, shall be given in manner hereinafter mentioned to such members as are under the provisions of these Articles entitled to receive notices from the Company: Provided that the accidental omission to give such notice to, or the non-receipt of such notice by, any such member shall not invalidate any resolution passed or proceeding had at any such meeting, and, with the consent of all the members for the time being entitled to receive notices of meetings, a meeting may be called upon a shorter notice and in such manner as such members may approve. Proper minutes shall be kept of all General Meetings of the Company. **Notice of meeting.**

Proceedings at General Meetings.

64. All business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting shall also be deemed special, with the exception of sanctioning a dividend, the consideration of the accounts and balance-sheets and the ordinary reports **Special business.**

of the Directors and Auditors, and the fixing of the remuneration of the Auditors.

Members may submit resolution to meeting on giving notice to Company.

65. Any member entitled to be present and vote at a meeting may submit any resolution to any General Meeting. Provided that at least the prescribed time before the day appointed for the meeting he shall have served upon the Company a notice in writing signed by him containing the proposed resolution, and stating his intention to submit the same. The prescribed time abovementioned shall be such that, between the date on which the notice is served or deemed to be served and the day appointed for the meeting there shall be not less than four nor more than fourteen intervening days.

Secretary to give notice to members.

66. Upon receipt of any such notice as in the last preceding Article mentioned, the Secretary shall, in any case where the notice of intention is received before the notice of the meeting is issued, include in the notice of the meeting, and shall in any other case issue as quickly as possible to the members entitled to notice ot the meeting, notice that such resolution will be proposed.

No business to be transacted unless quorum present. How quorum to be ascertained.

67. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. For all purposes the quorum shall be members personally present, not being less than two, and holding or representing by proxy not less than one-tenth part of the issued capital of the Company.

If quorum not present meeting adjourned or dissolved.

68. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if called on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

Chairman of Board to preside at all meetings.

69. The Chairman (if any) of the Board of Directors shall preside at every General Meeting, but if there be no such Chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same or shall be unwilling to act as Chairman, the members present shall choose some Director, or if no Director be present, or if all the Directors present decline to take the chair, they shall choose some member present to be Chairman of the meeting.

70. The Chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no member shall be entitled to any notice of an adjournment, or of the business to be transacted at an adjourned meeting. Except as provided by the statutes in the case of the Statutory Meeting, no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Notice of adjournment to be given.

71. At all General Meetings a resolution put to the vote of the meeting shall be decided on a show of hands, unless before or upon the declaration of the result of the show of hands a poll be demanded in writing by the Chairman (being a person entitled to vote) or by at least two members, or by the holder or holders in person or by proxy of at least one-twentieth part of the issued ordinary share capital of the Company, and unless a poll be so demanded a declaration by the Chairman of the meeting that a resolution has been carried, or has been carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, shall be conclusive, and an entry to that effect in the minute book of the Company shall be conclusive evidence thereof, without proof of the number or proportion of the votes recorded in favour of or against such resolution. How resolution decided.

72. If a poll be demanded in manner aforesaid, it shall be taken at such time and place, and in such manner as the Chairman shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Poll to be taken as Chairman shall direct.

73. No poll shall be demanded on the election of a Chairman of a meeting, or on any question of adjournment. No poll in certain cases.

74. In the case of an equality of votes, either on a show of hands or at the poll, the Chairman of the meeting shall be entitled to a further or casting vote. Chairman to have casting vote.

75. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded. Business to be continued if poll demanded.

Votes of Members.

Member to have one vote or one vote for every share, but holders of preference shares only in certain cases.

76. On a show of hands every member shall have one vote. In case of a poll every member shall have one vote for every share of which he is the holder. [Provided nevertheless that if and so long as the Company shall not have failed to pay in full the dividend accrued due upon the preference shares prior to the date of a meeting of the Company, the holders of the preference shares shall not be entitled to receive any notice of or to attend or vote at such meeting, either in person or by proxy, unless such meeting be (an Ordinary General Meeting or be) called for the purpose of altering the regulations of the Company or of winding up the Company](*a*).

Votes of lunatic member.

77. If any member be a lunatic, idiot or *non compos mentis*, he may vote by his committee, receiver, *curator bonis* or other legal curator, and such last-mentioned persons may give their votes either personally or by proxy.

Votes of joint holders of shares.

78. If two or more persons are jointly entitled to a share, then in voting upon any question the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered holders of the share, and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

Only members not indebted to Company in respect of shares entitled to vote.

79. Save as herein expressly provided, no person other than a member duly registered and who shall have paid everything for the time being due from him and payable to the Company in respect of his shares, shall be entitled to be present or to vote on any question either personally or by proxy, or as proxy for another member, or to be reckoned in a quorum at any General Meeting.

How votes may be given and who can act as proxy.

80. Votes may be given either personally or by proxy. On a show of hands a member present only by proxy shall have no vote, but a proxy for or representative of a corporation may vote on a show of hands. No person shall act as a proxy, except for a corporation, who is not entitled to be present and vote in his own right.

Instrument appointing proxy to be in writing.

81. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney

(*a*) The words in brackets will, of course, only be applicable if there are preference shares. It is not, however, always thought necessary to restrict the rights of preference shareholders in this way; so that it will in any case require consideration whether they should be inserted.

duly authorised in writing, or if such appointor is a corporation under its common seal, if any, and, if none, then under the hand of some officer duly authorised in that behalf(*a*). On instrument appointing a proxy to vote at a meeting shall be deemed to include the power to demand a pole on behalf of the appointor.

Instrument appointing a proxy to be left at Company's office.

82. The instrument appointing a proxy shall be deposited at the office at least forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.

Form of proxy.

83. Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit.—

" , LIMITED.
" I,
" of
" a member of , LIMITED,
" and entitled to votes, hereby appoint
"
" of another member
" of the Company, and failing him
" of
" another member of the
" Company, to vote for me and on my behalf
" at the [Statutory, Ordinary, Extraordinary or
" Adjourned, as the case may be] General Meeting
" of the Company to be held on the
" day of
" and at every adjournment thereof.
" As witness my hand this day of 19 .

Directors.

Appointment and number of Directors.

84. Until otherwise determined by a General Meeting, the number of Directors shall not be less than nor more than .
The first Directors(*b*) shall be

(*a*) Section 80 of the Act of 1913 enables a Company by a minute of its Directors to authorise any person to act as its representative, with full powers, at a meeting of another Company in which it holds shares; and a proxy under the seal of the Company will not be necessary.
(*b*) It is not necessary to have more than one Director.

and each of them shall, subject to Article 89, be entitled to hold office so long as he lives and is the registered holder of not less than ordinary shares in the Company, and shall be called a "permanent Director." Every such Director may act before acquiring his qualification, but shall acquire the same within two months after the registration of the Company(*a*)

Power to add to Directors.

85. The Directors shall have power from time to time and at any time to appoint additional Directors, that the total number of Directors shall not exceed the prescribed maximum. Any Director so appointed shall retire from office at the next General Meeting, but shall be eligible for re-election(*b*).

Directors' qualification.

86. The qualification of a Director, not being a permanent Director (hereinafter called an "ordinary Director"), shall be the holding in his own right alone, and not jointly with any other person, of ordinary shares, and this qualification shall be acquired within two months after appointment(*a*).

Permanent Director when to become ordinary Director.

87. Any permanent Director who ceases to be such through ceasing to hold the prescribed number of ordinary shares shall, if qualified as an ordinary Director, thereupon become and be an ordinary Director

Directors' remuneration.

88. The remuneration of the Directors (other than the Managing Director, if any) shall be at the rate of Rupees per mensem, and such further sum (if any) as shall be voted to them by the Company in General Meeting, and such remuneration shall be divided amongst the Directors (other than as aforesaid) as they shall determine, or, failing agreement, equally. The Directors shall also be entitled to be repaid all travelling and hotel expenses incurred by them respectively in or about the performance of their duties as Directors, including their expenses of travelling to or from Board Meetings.

(*a*) This is the maximum period prescribed by section 85 of the Act of 1913.

(*b*) Power to appoint additional Directors is often given to the Directors. See for instance clause 85 of Table A. Power to file casual vacancies is almost always given to the Directors. See Article 104, *post*, and clause 84 of Table A.

89. Subject as herein otherwise provided or to the terms of any subsisting agreement, the office of a Director shall be vacated— **Office of Director vacated in certain cases.**

(*a*) If he hold any office or place of profit under the Company other than that of Managing Director or Manager, or Secretary, or Trustee of a Trust Deed for securing any debentures or debenture stock of the Company.

(*b*) If he is adjudged insolvent or makes any arrangement or composition with his creditors

(*c*) If he be found lunatic or become of unsound mind.

(*d*) If he ceases to be a Director under the provisions of the statutes as to the acquiring and holding by Directors of their qualifications.

(*e*) If he absents himself from the meetings of the Board during a continuous period of six months without special leave of absence from the Directors, and they pass a resolution that he has by reason of such absence vacated his office.

(*f*) If by notice in writing given to the Company he resigns his office.

Managing Directors.

90. The Directors may from time to time appoint any one or more of their body to be Managing Director or Managing Directors, for such period and upon such terms as they think fit, and may vest in such Managing Director or Managing Directors such of the powers hereby vested in the Directors generally as they may think fit, and such powers may be made exercisable for such period or periods, and upon such conditions and subject to such restrictions, and generally upon such terms as to remuneration and otherwise as they may determine. The remuneration of a Managing Director may be by way of salary or commission or participation in profits, or by any or all of those modes. **Directors may appoint Managing Director.**

91. A Managing Director shall not while he continues to hold that office be subject to retirement by rotation, and he shall not be taken into account in determining the rotation of retirement of Directors, but he shall, subject to the **Special position of Managing Director.**

provisions of any contract between him and the Company, be subject to the same provisions as to resignation and removal as the other Directors of the Company, and if he cease to hold the office of Director he shall *ipso facto* and immediately cease to be a Managing Director.

Powers and Duties of Directors.

Business of Company to be managed by Directors.

92. The business of the Company shall be managed by the Directors, who may pay all such expenses of and preliminary and incidental to the promotion, formation, establishment and registration of the Company as they think fit, and may exercise all such powers of the Company, and do on behalf of the Company all such acts as may be exercised and done by the Company, and as are not by the statutes or by these Articles required to be exercised or done by the Company in General Meeting, subject nevertheless to any regulations of these Articles, to the provisions of the statutes, and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the Company in General Meeting, but no regulation made by the Company in General Meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

Limit to Directors' borrowing powers.

93. The amount for the time being remaining undischarged of moneys borrowed or raised by the Directors for the purposes of the Company (otherwise than by the issue of share capital) shall not at any time exceed Rupees without the sanction of the Company in General Meeting. But no lender shall be bound to see that this limit is observed.

Continuing Directors may act to fill vacancic or summon meetings.

94. The continuing Directors may act at any time notwithstanding any vacancy in their body; provided always that in case the Directors shall at any time be reduced in number to less than it shall be lawful for them to act as Directors for the purpose of filling up vacancies in their body, or of summoning a General Meeting of the Company, but not for any other purpose.

All moneys to be paid into banking account.
Cheques to be signed by one Director

95. All moneys, hundis, bills and notes belonging to the Company shall be paid to or deposited with the Company's bankers to an account to be opened in the name of the Company. Cheques on the Company's bankers, until otherwise from time to time resolved upon by the Directors, shall

be signed by at least one Director(a) and countersigned by the Secretary. The Company's banking account shall be kept with such banker or bankers as the Directors shall from time to time determine.

and Secretary.

Directors to appoint bankers.

96. The Directors shall duly comply with the provisions of the statutes, and particularly the provisions as to registration and keeping copies of mortgages and charges, keeping of the register of members, keeping a register of Directors and sending a copy thereof or a notification of any changes therein to the registrar of companies, and sending to such registrar an annual list of members and summary, notices as to increase of capital, returns of allotments and contracts relating thereto, copies of Special and Extraordinary Resolution and other particulars connected with the above.

Directors to comply with the statutes.

97. A Director may contract with and be interested in any contract made with the Company and shall not be liable to account for any profit made by him by reason of any such contract, provided that the precise nature of the interest of the Director in such contract be declared to the Board before or at the time the same is entered into; but, except as regards the agreement mentioned in Article 3 hereof, no Director shall vote in respect of any contract or arrangement in which he shall be interested.

Director may contract with Company.

Rotation of Directors.

98. Subject to the provisions of these Articles, one-third of the ordinary Directors for the time being (if any), or if their number is not a multiple of three, then the number nearest to but not exceeding one-third, shall retire from office at the Ordinary General Meeting in 19 and in every subsequent year.

One-third of Directors to retire at Ordinary Meeting.

99. The Directors to retire shall be the Directors who have been longest in office since their last election. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot. A retiring Director shall be eligible for re-election, and shall act as a Director throughout the meeting at which he retires.

Senior Directors to retire. Retiring Director re-eligible.

100. Subject as hereinafter provided, the Company shall, at the meeting at which any Director shall retire in manner aforesaid, fill up the vacated office by electing a person thereto.

Office to be filled at meeting at which Director retires.

(a) Where there are two or more Directors, it is often thought desirable that two should sign cheques; but this may be inconvenient.

Members eligible for office of Director if prescribed notice and consent lodged at office.

101. No person, not being a Director retiring at the meeting, shall, unless recommended by the Directors for election, be eligible for the office of Director at any General Meeting, unless, not less than the prescribed time before the day appointed for the meeting, there shall have been given to the Secretary notice in writing, by some member duly qualified to be present and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing, signed by the person to be proposed, of his willingness to be elected. The prescribed time abovementioned shall be such that between the date when the notice is served or deemed to be served and the day appointed for the meeting, there shall be not less than seven nor more than fourteen intervening days

If places not filled up retiring Directors deemed re-elected

102. Subject as herein provided, if at any meeting at which an election of Directors ought to take place, the places of the retiring Directors, or some of them, are not filled up, the retiring Directors, or such of them as have not had their places filled up, shall, if willing to act, be deemed to have been re-elected.

Number of Directors may be increased or reduced

103. The Company may from time to time in General Meeting increase or reduce the number of Directors, and determine in what rotation such increased or reduced number shall go out of office.

Casual vacancy in Board to be filled by Directors

104. Any casual vacancy occurring in the Board of Directors may be filled up by the Directors, but any person so chosen shall retain his office only until the next following Ordinary General Meeting of the Company and shall then be eligible for re-election.

Ordinary Director may be removed by Extraordinary Resolution.

105. The Company may by Extraordinary Resolution remove any ordinary Director before the expiration of his period of office, and may, if thought fit, by Ordinary Resolution appoint another Director in his stead, but any person so appointed shall retain his office so long only as the Director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

Meeting of Directors.

106. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Unless otherwise determined, two shall be a quorum. Questions arising at any meeting shall

Quorum.

be decided by a majority of votes. In case of an equality of votes, the Chairman shall have a second or casting vote. **Casting vote of Chairman.**

107. A Director may, and on the request of a Director the Secretary shall, at any time summon a meeting of the Directors. **Director may call meeting of Board.**

108. The Directors may from time to time elect a Chairman, who shall preside at meetings of the Directors, and determine the period for which he is to hold office, but if no such Chairman be elected, or if at any meeting the Chairman be not present within five minutes after the times appointed for holding the same, the Directors present shall choose some one of their number to be Chairman of such meeting. **Chairman of Directors.**

109. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors **Power for Directors to appoint committees.**

110. A committee may elect a Chairman of its meetings. If no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairman of the meeting. **Chairman of committees.**

111. A committee may meet and adjourn as its members think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairman shall have a second or casting vote. **Meetings of committees.**

112. All acts *boná fide* done by any meeting of Directors, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director. **All acts done by Directors to be valid**

113. The Directors shall cause proper minutes to be made of all General Meetings of the Company and also of all appointments of officers, and of the proceedings of all meetings of Directors and committees, and of the attendances thereat, and all business transacted at such meetings, and any such minute of any meeting, if purporting to be signed by the Chairman of such meeting, or by the Chairman of the next succeeding meeting, shall be conclusive evidence without any further proof of the facts therein stated. **Minutes to be made and when signed by Chairman conclusive evidence.**

Resolution signed by Directors to be valid.

114. A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly called, held and constituted

The Seal.

Seal to be affixed by authority of resolution of Board and in the presence of one Director and Secretary.

115. The seal shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors, and in the presence of at least one Director(a) and of the Secretary, and such Director(a) and the Secretary shall sign every instrument to which the seal shall be affixed in their presence, and in favour of any purchaser or person *bonâ fide* dealing with the Company such signatures shall be conclusive evidence of the fact that the seal has been properly affixed.

Secretary.

Secretary.

116. of shall be the first Secretary of the Company The Directors may from time to time, by resolution, appoint a temporary substitute for the Secretary, who shall be deemed to be the Secretary during the term of his appointment

Dividends and Reserve Fund

Application of profits.

117. Subject to the provisions hereinafter contained as to reserve, and to any preferential or other special rights for the time being attached to any special class of shares, the profits of the Company available for dividend shall be applied in payment of dividends upon the ordinary shares of the Company in proportion to the amounts paid up or credited as paid up thereon respectively.

Declaration of dividends.

118 The Directors may, with the sanction of a General Meeting, from time to time declare dividends, but no such dividend shall be payable except out of the profits of the Company, provided that the Directors may, if they think fit, from time to time pay to the members such *interim* dividends as appear to them to be justified by the profits of the Company. No higher dividend shall be paid than is recommended by the Directors, and the declaration of the Directors as to the amount of the net profits shall be conclusive.

(a) "Two Directors" is often preferred in this clause to "one Director."

119. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve fund or reserve funds, which shall at the discretion of the Directors be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Company or for repairing or maintaining any works connected with the business of the Company, or shall with the sanction of the Company in General Meeting be, as to the whole or in part, applicable for equalising dividends, or for distribution by way of bonus among the members of the Company for the time being, on such terms and in such manner as the Company in General Meeting shall from time to time determine, and pending such application the Directors may employ the sums from time to time so set apart as aforesaid in the business of the Company or invest the same in such securities, other than the shares of the Company, as they may select. The Directors may also from time to time carry forward such sums as may be deemed expedient in the interests of the Company.

Directors may form reserve fund and invest.

120. Every dividend warrant may be sent by post to the last registered address of the member entitled thereto, and the receipt of the person whose name at the date of the declaration of the dividend appears on the register of members as the owner of any share, or in the case of joint holders, of any one of such joint holders, shall be a good discharge to the Company for all payments made in respect of such share. No unpaid dividend or interest shall bear interest as against the Company

Dividend warrants to be sent to members by post

Unpaid dividends not to bear interest.

Accounts.

121. The Directors shall cause true accounts to be kept—

Accounts to be kept.

(*a*) Of the assets and liabilities of the Company, and

(*b*) Of all sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place.

The books of account shall be kept at the office or at such other place as the Directors shall think fit, and shall always be open to the inspection of the Directors.

Books to be kept at registered office.

122. The Directors shall from time to time determine whether, in any particular case or class of cases, or generally, and to what extent, and at what times and places and under

Accounts and books may be inspected by members.

what conditions or regulations, the accounts and books of the Company, or any of them, shall be open to the inspection of members, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company, except as conferred by statute or authorised by the Directors, or by a resolution of the Company in General Meeting.

Profit and loss account to be made up and laid before Company

Balance-sheet to be made out yearly.

123. Once at least in every year the Directors shall lay before the Company in General Meeting a profit and loss account for the period since the preceding account, or (in the case of the first account) since the incorporation of the Company, made up to a date not more than three months before such meeting. A balance-sheet shall be made out in every year and laid before the Company in General Meeting, made up to a date not more than three months before such meeting. The balance-sheet shall have attached thereto the Auditors' report and shall be accompanied by a report of the Directors as to the state of the Company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to any reserve fund. The Auditors' report shall be read before the Company in General Meeting as required by section 131 of the Indian Companies Act, 1913

Audit.

Accounts to be audited.

124 Once at least in every year the accounts of the Company shall be examined, and the correctness of the statement and balance-sheet ascertained by one or more Auditor or Auditors, and the provisions of the Indian Companies Act, 1913, in regard to Audit and Auditors shall be observed(*a*).

Notices

Service of notices by Company.

125. A notice or any other document may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address as appearing in the register of members.

How joint holder of shares may be served

126. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named

(*a*) See sections 131, 132, 144, 145, of the Indian Companies Act, 19

first in the register of members, and any notice so given shall be sufficient notice to the holders of such share.

127. Any member described in the register of members by an address not within British India, who shall from time to time give the Company an address within British India at which notices may be served upon him, shall be entitled to have served upon him at such address any notice to which he would be entitled under these Articles, but, save as aforesaid, no member other than a member described in the register of members by an address within British India shall be entitled to receive any notice from the Company. **Members abroad not entitled to notices unless they give address.**

128 A notice may be given by the Company to the persons entitled to any share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives or assignee of such deceased or insolvent member, at the address (if any) in British India supplied for the purpose by such persons as aforesaid, or (until such address has been supplied) by giving the notice in the manner in which the same would have been given if the death or insolvency had not occurred. **Notices in case of death or bankruptcy**

129 Any notice or other document, if served or sent by post, shall be deemed to have been served or delivered at the time when the letter containing the same is put into the post, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice or document was properly addressed and put into the post office as a prepaid letter **When service effected.**

130 Where a given number of days' notice or notice extending over any other period is required to be given, the day of service shall be counted in such number of days or other period. **How time to be counted**

Indemnity.

131. The Directors, Auditors, Secretary and other officers for the time being of the Company, and any trustees for the time being acting in relation to any of the affairs of the Company, and their heirs, executors and administrators respectively, shall be indemnified out of the assets of the Company from and against all suits, proceedings, costs, charges, losses, damages, and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall **Directors and other officers to be indemnified against all damages except such as they may incur by wilful neglect and default.**

incur or sustain by or through their own wilful neglect or default respectively, and no such officer or trustee shall be answerable for the acts, receipts, neglects or defaults of any other officer or trustee, or for joining in any receipt for the sake of conformity, or for the solvency or honesty of any bankers or other persons with whom any moneys or effects belonging to the Company may be lodged or deposited for safe custody, or for any insufficiency or deficiency of any security upon which any moneys of the Company shall be invested, or for any other loss or damage due to any such cause as aforesaid, or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such officer or trustee.

Winding Up.

Distribution of assets.

132. If the Company shall be wound up, the surplus assets shall (subject to any rights attached to any special class of shares forming part of the capital for the time being of the Company) be applied first in repayment of the capital paid up on the ordinary shares; and the excess, if any, shall be distributed among the members holding ordinary shares in proportion to the number of ordinary shares held by them respectively at the commencement of the winding up.

Distribution of assets in specie.

133. If the Company shall be wound up the Liquidators may, with the sanction of an Extraordinary Resolution, divide, among the contributories *in specie* any part of the assets of the Company.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS.

Dated the day of 191

Witness to the above Signatures—

APPENDIX C.

Form of Memorandum and Articles of Association of a Private Company as defined by Section 2 (13) of the Indian Companies Act, 1913, adopting Table A with modifications.

THE INDIAN COMPANIES ACT, 1913.

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION.*

OF

LIMITED.

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1 The name of the Company is "
LIMITED."

2. The registered office of the Company will be situate in

3. The objects for which the Company is established are—

(a) To enter into and carry into effect, with such (if any) modifications or alterations as may be agreed upon, an agreement already prepared and expressed to be made between .
of the one part, and this Company of the other part, a draft of which has been subscribed with a view to identification by

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* The above form of Memorandum of Association has been adapted for use by a private company under the Indian Companies Act, 1913, from a draft which is the copyright of The Solicitors' Law Stationery Society, Limited, of London, and was prepared for the Society by Mr. Cecil W. Turner, of Lincoln's Inn, Barrister-at-Law.

(*b*) To carry on business as

and any other trade or business whatsoever which can, in the opinion of the Board, be advantageously carried on by the Company in connection with or as ancillary to the general business of the Company.

(*c*) To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, easements, rights, privileges, concessions, machinery, patents, plant, stock-in-trade, and any moveable and immoveable property of any kind necessary or convenient for the Company's business

(*d*) To erect, construct, lay down, enlarge, alter and maintain any buildings, works and machinery necessary or convenient for the Company's business.

(*e*) To borrow or raise or secure the payment of money for the purposes of or in connection with the Company's business.

(*f*) To mortgage and charge the undertaking and all or any of the moveable and immoveable property, present or future, and all or any of the uncalled capital for the time being of the Company, and to issue at par or at a premium or discount, or for such consideration as may be thought fit, debentures, mortgage debentures and debenture stock payable to bearer or otherwise, and either permanent or redeemable or repayable, and collaterally or further to secure any securities of the Company by a trust-deed or other assurance

(*g*) To issue and deposit any securities which the Company has power to issue by way of mortgage to secure any sum less than the nominal amount of such securities, and also by way of security for the performance of any contracts or obligations of the Company.

(*h*) To receive money on deposit or loan upon such terms as the Company may approve, and to guarantee the debts and contracts of customers and others.

(i) To make advances to customers and others with or without security, and upon such terms as the Company may approve, and generally to act as bankers for customers and others.

(j) To grant pensions, allowances, gratuities and bonuses to employés or ex-employés of the Company or its predecessors in business or the dependants of such persons, and to establish and support, or to aid in the establishment and support, of any schools, and any educational, scientific, literary, religious or charitable institution, or trade societies, whether such societies be solely connected with the trade carried on by the Company or its predecessors in business or not, and any club or other establishment calculated to advance the interests of the Company or of the persons employed by the Company or its predecessors in business.

(k) To make, accept, endorse and execute promissory notes, bills of exchange, hundis, and other negotiable instruments

(l) To invest and deal with the moneys of the Company not immediately required in or upon such securities and in such manner as may from time to time be determined

(m) To pay for any property or rights acquired by the Company either in cash or fully or partly paid-up shares, with or without preferred or deferred rights in respect of dividend or repayment of capital or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another, and generally on such terms as the Company may determine.

(n) To accept payment for any property or rights sold, or otherwise disposed of or dealt with by the Company, either in cash by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred rights in respect of dividend or repayment of capital or otherwise, or in debentures or mortgage debentures or debenture stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and

generally on such terms as the Company may determine.

(*o*) To enter into partnership or any joint-purse arrangement or any arrangement for sharing profits, union of interests or co-operation with any company, firm or person carrying on or proposing to carry on any business within the objects of this Company, and to acquire and hold shares, stock or securities of any such company.

(*p*) To establish or promote or concur in establishing or promoting any other company whose objects shall include the acquistion and taking over of all or any of the assets and liabilities of or shall be in any manner calculated to advance directly or indirectly the objects or interests of this Company, and to acquire and hold shares, stock or securities of and guarantee the payment of any securities issued by or any other obligation of any such company.

(*q*) To purchase or otherwise acquire and undertake all or any part of the business, property, liabilities and transactions of any person or company carrying on any business which this Company is authorised to carry on, or possessed of property suitable for the purposes of the Company.

(*r*) To sell, improve, manage, develop, turn to account, exchange, let on rent, royalty, share of profits or otherwise, grant licenses, easements and other rights of and over, and in any other manner deal with or dispose of the undertaking and all or any of the property for the time being of the Company for such consideration as the Company may think fit.

(*s*) To amalgamate with any other company whose objects are or include objects similar to those of this Company, whether by sale or purchase (for fully or partly paid-up shares or otherwise) of the undertaking subject to the liabilities of this or any such other company as aforesaid, with or without winding up, or by sale or purchase (for fully or partly paid-up shares or otherwise) of all the shares or stock of this or any such other company as aforesaid, or by partnership, or any

arrangement of the nature of partnership, or in any other manner.

(*t*) To distribute among the members *in specie* any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.

(*u*) To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees or otherwise, and to do all such other things as are incidental or conducive to the above objects or any of them.

4. The liability of the members is limited.

5. The share capital of the Company is Rupees divided into shares of Rupees each, of which are preference shares and are ordinary shares, with such respective rights as are defined by the Articles of Association registered herewith, subject however to the right and power to modify or vary the same contained in Clause 4 of Table A in the First Schedule to the Indian Companies Act, 1913.

Any new shares from time to time to be created may from time to time be issued with any such guarantee or any such right of preference, whether in respect of dividend or of repayment of capital, or both, or any such other special privilege or advantage over any shares previously issued or then about to be issued, or at such a premium or with such deferred rights as compared with any other shares previously issued or then about to be issued, or subject to any such conditions or provisions, and with any such right or without any right of voting, and generally on such terms as the Company may from time to time by Extraordinary Resolution determine, but so that any preferential or special rights attached to issued shares shall not be affected or interfered with except in manner provided in Clause 4 of Table A aforesaid.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in

pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS(a)	Number of Shares taken by each Subscriber.

Dated the day of 19 .

Witness to the above Signatures—

(a) *N.B.*—There need only be two subscribers in the case of a "Private Company" as defined by Section 2 (13) of the Indian Companies Act, 1913.

THE INDIAN COMPANIES ACT, 1913.

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION.*

OF

LIMITED.

Preliminary.

1. Subject as hereinafter provided, the regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913 (hereinafter referred to as Table A), shall apply to the Company.

2. Clauses 2, 5, 20, 31 to 40 (both inclusive), 49, 51, 53, 54, 56, 68, 69, 70, 77, and 96 of Table A shall not apply to the Company, and in lieu thereof the clauses hereinafter contained dealing with the respective subject-matters dealt with in such clauses shall be applicable.

3. The Company shall enter into and carry into effect an agreement under the seal in the terms of the agreement referred to in Clause 3 (*a*) of the Memorandum of Association, subject to such, if any, modifications or alterations as the Directors may think fit, whether made before or after the execution thereof.

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Private Company.

4. The Company is a "Private Company" within the meaning of section 2(13) of the Indian Companies Act, 1913, and accordingly (1) no invitation shall be issued to the public to subscribe for any shares, debentures or debenture stock of the Company; (2) the number of the members of the Company (exclusive of persons in the employment of the Company) shall be limited to fifty, provided that for the purposes of this provision, where two or more persons hold one or more shares in the Company jointly, they shall be treated as a single member; and (3) the right to transfer the shares of the Company is restricted in manner and to the extent hereinafter appearing.

Shares.

5. of the shares in the original capital shall be preference shares, and subject to the provisions of Clause 4 of Table A such preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of per cent. per annum upon the capital paid up thereon, and the right in a winding up to the return of the capital paid up thereon in priority to all other shares, but the holders of such preference shares shall not have the right to participate further in profits or assets.

6 The shares shall be at the disposal of the Directors and they may allot or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper, subject always to Clause 4 hereof and to the provisions of the said agreement as to the shares to be allotted in pursuance thereof, and provided that no shares shall be issued at a discount.

7. The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, for any shares in the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the Company, provided that the commission does not exceed per cent. on such shares, and such commission may be paid, in whole or in part, in cash or fully or partly paid shares of the Company, as may be arranged. The statement required by section 105 of the Indian Companies Act, 1913, to be filed shall be duly filed before the payment of any such commission and the amount of any such commission shall be stated in the

balance-sheets of the Company as required by section 106 of the same Act.

8 No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or recognise any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share, or (except only as by these presents otherwise expressly provided) any other right in respect of any share except an absolute right to the entirety thereof in the registered holder.

Transfer of Shares.

9. No transfer of any share in the capital of the Company shall be made or registered without the previous sanction of the Directors, who may, without assigning any reason, decline to give any such sanction, and shall so decline in the case of any transfer the registration of which would involve a contravention of Article 4 hereof The Directors may also suspend the registration of transfers during the fourteen days immediately preceding the Ordinary General Meeting in each year. The Directors may decline to recognise any instrument of transfer unless (a) such fee, not exceeding Rupees , as the Directors may from time to time determine, is paid to the Company in respect thereof, and (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer.

Proceedings at General Meetings.

10. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given), specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the Company in General Meeting, to such persons as are under the regulations of the Company entitled to receive such notices from the Company; but the accidental omission to give such notice to or the non-receipt of such notice by any of such persons shall not invalidate the proceedings at any General Meeting. A meeting may, with the

written consent of all the members, be called by a shorter notice and in such manner as the members think fit.

11. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two members personally present shall be a quorum(*a*).

12. The Chairman of the Board of Directors shall preside at every General Meeting, but if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same, or shall be unwilling to act as Chairman, the members present shall choose some Director, or if no Director be present, or if all the Directors present decline to take the chair, they shall choose some member present to be Chairman of the meeting.

13. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members or by the holder or holders in person or by proxy of at least one-twentieth part of the issued ordinary share capital of the Company, and unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the minute book of the Company shall be conclusive evidence thereof without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Directors.

14. Unless and until otherwise determined by the company in General Meeting, the number of the Directors shall not be less than nor more than

15. The following shall be the first Directors of the Company, that is to say—

(*a*) Clause 51 of Table A provides for a quorum of three members; but as private companies may consist of two members only, it seems safer that the quorum should be fixed at two

16. The remuneration of the Chairman shall be at the rate of Rupees per mensem, and of each of the other Directors at the rate of Rupees per mensem. The Company in General Meeting may from time to time direct such further sum or sums as may be thought fit to be paid as and by way of remuneration to the Directors or any one or more of them. The Directors shall also be entitled to be repaid all travelling and, hotel expenses incurred by them respectively in or about the performance of their duties as Directors, including their expenses of travelling to and from Board meetings.

17. The qualification of a Director shall be the holding in his own right and not jointly with any other person of shares of the Company of the aggregate nominal value of at least Rupees , and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913. A Director may act before acquiring his qualification.

Powers and Duties of Directors.

18. The Directors from time to time, and at any time, may provide through local boards, attorneys or agencies for the management of the affairs of the Company abroad, and may appoint any persons to be members of such local boards or as attorneys or agents, and may fix their remuneration. The Company may exercise the powers conferred by sections 41 and 91 of the Indian Companies Act, 1913, and those powers shall accordingly be exerciseable by the Directors.

19. The Directors from time to time, and at any time, may delegate to any Managing Director, Local Board, Head Manager, Manager, Attorney or Agent any of the powers, authorities and discretions for the time being vested in the Directors, and any such appointment or delegation may be made on such terms and subject to such conditions, including power to sub-delegate, as the Directors may think fit, and the Directors may at any time remove any person so appointed, and may annul or vary any such delegation, but no person dealing in good faith and without notice of such annulment or variation shall be affected thereby.

Disqualification of Directors.

20. The office of a Director shall be vacated

(1) If by notice in writing to the Company he resigns the office of Director.*

(2) If he ceases to be a Director by virtue of the Indian Companies Act, 1913, section 85

(3) If he holds any other office of profit under the Company except that of Managing Director or Manager or Trustee of a trust-deed for securing debentures or debenture stock of the Company.

(4) If he absents himself from the meetings of the Directors during a continuous period of three months without special leave of absence from the Directors, and they pass a resolution that he has by reason of such absence vacated office.

(5) If he is adjudged insolvent.

(6) If he is found lunatic or becomes of unsound mind

21. A Director shall be capable of contracting and participating in the profits of any contract with the Company in the same manner as if he were not a Director, subject nevertheless (save as regards the agreement referred to in Article 3 hereof) to the following provisions, namely (1) Before the contract is entered into, or so soon thereafter as he becomes interested therein, he shall disclose in writing to the Board his interest in the contract, and (2) after he has become interested he shall not vote in respect of the contract or any matter arising there out, and if he do so vote his vote shall not be counted

Proceedings of Directors.

22. A resolution in writing signed by every member of the Board shall have the same effect and validity as a resolution of the Board duly passed at a meeting of the Board duly convened and constituted.

Dividends.

23. The Directors may from time to time pay to the members such *interim* dividends as appear to the Directors to be justified by the profits of the Company according to the estimate formed by them thereof.

* Clause 77 of Table A does not expressly provide for resignation.

Notices.

24. In the application to the Company of Clause 116 of Table A, the words "(including bearers of share warrants)" shall be omitted therefrom.

Winding up.

25. In a winding up the Liquidators may, with the sanction of an Extraordinary Resolution, distribute all or any of the assets *in specie* among the contributories in accordance with their rights.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS

Dated the day of 19

Witness to the above Signatures—

APPENDIX D.

Table of Statutory Duties and Penalties.

The subjoined table has been compiled for the convenience of Directors, Secretaries, Managers and others concerned with the conduct of companies limited by shares, as a guide and to facilitate reference to the Act itself. It has not been possible to adopt any definite classification of the duties imposed by the Act, some of which are not new and others of which only arise on the happening of particular events, *e.g.*, after the company has resolved to alter its share capital, but as far as possible that order has been followed in which it is probable that the need for their observance is likely to occur For the sake of brevity the incidence of penalties is not stated; in some cases both the company and certain individuals are liable, while in others the liability is only that of the company or of the person responsible for the breach of duty The class of company to which the table more particularly refers is, as already indicated, companies limited by shares, since far more public companies fall within that category than within the other two with which the Act is concerned, *viz.*, companies limited by guarantee and unlimited companies The case of private companies has been dealt with at length elsewhere, where special reference has been made to the exemptions which they enjoy, but it may be here repeated, that except where expressly otherwise stated in the Act, the statutory duties of a private company do not differ from those of a public company. Duties arising in the course of liquidation have not been included as the affairs of the company will then have passed into the hands of the liquidator.

Formation.

Sec. 22. Memorandum and Articles (if any) to be filed with the registrar. (As to contents of Memorandum, see sections 6, 7, 8, 9, of Articles, see sections 17, 18, 19).

Sec. 249. Fees to be paid on registration. (For particulars of amount of fees, see Table B of the Act).

Formation—(contd.)

Declaration of compliance with requirements of the Act to be filed with the registrar. Sec. 24 (2)

Directors.

Every company registered after April 1st, 1914, must have at least two directors. Sec. 83A

In default of and subject to any regulations in the articles :— Sec. 83B.

(i) Subscribers to the memorandum shall be deemed to be directors until the first directors shall have been appointed ;

(ii) Directors shall be appointed in general meeting.

If a director is appointed by the articles, his consent in writing to act, and, unless he has signed the memorandum for his qualification shares, a contract signed by him to take and pay for them to be filed with the registrar before the registration of the articles. A list of persons who have consented to act as directors to be filed with the registrar on the application for registration of the memorandum and articles *Penalty : if the list contains the name of any person who has not consented : Fine not exceeding Rs.* 500. Sec. 84.

Director to obtain his share qualification within two months after appointment or such shorter time as may be fixed by the articles. In the event of a director failing to obtain his share qualification within the proper time or subsequently ceasing to hold it, his office will be vacated and he may not be re-appointed until qualified. *Penalty for acting as director whilst unqualified after the period has expired : Fine not exceeding Rs.* 50 *per diem.* Sec. 85.

Directors to disclose their interest in any contract entered into by the company. *Penalty : Fine not exceeding Rs.* 1,000. Sec. 91A.

Directors not to vote as directors on any contract in which interested (other than contracts of indemnity against loss they may suffer by becoming sureties for the company). *Penalty : Fine not exceeding Rs.* 1,000, *and the vote shall not count.* Sec. 91B.

Directors to sign balance-sheet, and in certain cases a statement subjoined explaining non-compliance with the section. *Penalty for issuing, etc. copy of balance-sheet not duly signed : Fine not exceeding Rs.* 500. Sec. 133.

Where a Prospectus is issued.

Sec 92 Prospectus to be dated.

Copy of prospectus, duly signed, to be filed with the registrar on or before the date of publication, and no prospectus to be issued until a copy has been so filed. *Penalty for issuing a prospectus without a copy being filed: Fine not exceeding Rs. 50 per diem from the date of issue until a copy is filed.*

Prospectus to state on the face of it that a copy has been filed for registration.

Sec. 93. Prospectus to state certain particulars. (For details see sub-sections (1) (*a*) to (*o*). Sub-sections (2), (3), (4) state certain exceptions to the general provisions of the section.)

Sec. 105. Prospectus to disclose amount or rate per cent. of commission paid or agreed to be paid for underwriting or placing shares (under authority contained in the articles).

Sec. 84 If the prospectus names a director or proposed director, his consent in writing to act, and, unless he has signed the memorandum for his qualification shares, a contract signed by him to take and pay for them, to be filed with the registrar.

Sec. 99. Contracts referred to in the prospectus may not be varied except subject to the approval of the company in general meeting.

Where no Prospectus is issued.

Sec. 98. Statement in lieu of prospectus, duly signed, in the form set out in the Second Schedule to be filed with the registrar before the first allotment of shares or debentures.

Sec. 84. Sec. 99. Sec. 105. These sections apply, *mutatis mutandis*, to the statement in lieu of prospectus as in the case of the issue of a prospectus.

Allotment.

Sec. 101. Before allotment certain conditions stated in the section as to subscription to be complied with. *An allotment in contravention of the section is voidable at the instance of the applicant, and directors are liable to compensate the company and allottee (Section* 102)

Sec. 104. Return of allotments, stating certain particulars, to be filed with the registrar within one month ; and

Allotment—(contd.)

A contract in writing, duly stamped, constituting the title of the allottee, where shares are allotted as fully or partly paid up otherwise than in cash, to be produced before the registrar, and a verified copy thereof, and a return stating certain particulars regarding such shares, to be filed with the registrar within one month;

Where such contract is not in writing stamped particulars thereof to be filed with registrar within one month after allotment; *Penalty: Fine not exceeding Rs.* 500 *per diem* · *but an application may be made to the Court for relief.*

Shares to be distinguished by numbers. Sec. 28.

Register of Members.

Register of members to be kept and certain particulars entered therein. *Penalty: Fine not exceeding Rs.* 50 *per diem.* Sec. 31.

Register of members to be open to inspection at the registered office and copy may be required. *Penalty: Fine not exceeding Rs* 20 *for each refusal, and per diem.* Sec. 36.

Trusts not to be entered on the register. Sec. 33.

Transfers to be registered at request of transferor as if the application for the entry were made by the transferee. Sec. 34.

Certificates.

Certificates of all shares, debentures, and certificates of debenture stock allotted or transferred to be completed and ready for delivery within three months of allotment or of registration of transfer (unless the conditions of issue otherwise provide). *Penalty: Fine not exceeding Rs.* 50 *per diem.* Sec. 108.

Registered Office.

Company to have a registered office, and notice of the situation or of change of situation to be filed with the registrar. *Penalty for carrying on business without complying with the section: Fine not exceeding Rs.* 50 *per diem.* Sec. 72.

Mortgages and Charges—(contd.)

Sec. 124. Company's register of mortgages kept under sec. 123 to be open to inspection. *Penalty for refusal to give inspection: Fine not exceeding Rs.* 50, *and further fine not exceeding Rs.* 20 *per diem.*

Sec. 125 Register of debenture-holders (except when closed under authority in the articles) to be open to inspection of holders of debentures or shares, and copy to be furnished of the register or part thereof and of the trust-deed. *Penalty for refusal to give inspection or furnish copy: Fine not exceeding Rs.* 50, *and further fine not exceeding Rs.* 20 *per diem.*

Statutory Report and Meeting

Sec. 77. A report, called the statutory report, to be prepared and :—

(1) To state certain particulars (specified in sub-section 3).

(2) To be certified (sub-sections 3 and 4).

(3) To be sent at least ten days before the statutory meeting to every member and other persons entitled thereto (sub-section 2). *Penalty (under sub-sec.* 6)*: Fine not exceeding Rs.* 20 *per diem.*

(4) A copy to be filed with the reigstrar forthwith (sub-section 5). *Penalty (under sub-sec.* 6)*: Fine not exceeding Rs.* 20 *per diem*

A general meeting, called the statutory meeting, to be held within six months from the date at which the company is entitled to commence business (sub-section (1). *At the statutory meeting.* A list showing names, etc., of members and number of shares held by them to be produced at commencement and remain open to the members during the meeting (sub-section 7).

Any matters relating to the formation of the company or arising out of the statutory report may be discussed, but no resolution may be passed of which due notice under the articles has not been given (sub-section 8). The meeting may be adjourned (sub-section 9).

Balance-sheet, General Meetings, and Auditors.

Account to be balanced, and balance-sheet prepared once yearly and at intervals of not more than fifteen months. *Penalties for default in complying with the requirements of the section: Fine not exceeding Rs.* 1,000. Sec. 131 (1).

Balance-sheet :—

To contain certain particulars (specified in the section) and to be in or approximate to Form F in the Third Schedule (*vide* also section 106 as to certain further particulars to be shown) · Sec. 132.

To be audited ;

To have auditor's report attached ; or, to have a reference to the report inserted at foot ; Sec. 131 (2).

At least seven days before the meeting at which it is to be laid before the members, a copy (after audit) to be sent to every member, and to be deposited at the registered office for inspection by members: *Penalty for default in complying with the requirements of the section: Fine not exceeding Rs.* 1,000. Sec. 131 (3).

To be signed by Directors, and in certain cases a statement explaining non-compliance with the section to be subjoined. *Penalty for issuing, etc. copy of balance-sheet not duly signed: Fine not exceeding Rs.* 500. Sec. 133.

Auditors to have access to books, etc., of the company, and may require directors and officers to furnish information. Sec. 145.

Auditors to make a report, containing certain statements, specified in the section to the members on the accounts and balance-sheet.

Auditor's report to be open to inspection by any member. *Penalty for default in complying with requirements of the section*; *Fine not exceeding Rs.* 1,000. Sec. 145 (2).

A General Meeting of the company to be held once at least in every year and not more than fifteen months after the holding of the last preceding general meeting. *Penalty: Fine not exceeding Rs.* 500. Sec. 76.

At the general meeting :—

The balance-sheet will be laid before the members [*vide* sections 131 (3) and 134].

Balance-sheet, General Meetings, and Auditors—(contd.)

Auditor's report to be read [*vide* section 131 (2)]. *Penalty for default in complying with requirements of the section: Fine not exceeding Rs.* 1,000.

Auditors to be appointed and their remuneration fixed [*vide* sec. 144 (3) (9)]. (Notice of a member's intention to nominate to the office of auditor a person other than the retiring auditor to be given to the retiring auditor and every member seven days before the annual general meeting [sec. 144 (6)].

Directors (at least two) to be appointed [in default of and subject to any regulations in the articles. *vide* sec. 83B (ii)].

Sec. 32. Once a year, a list of members and summary of share capital and shares, (1) to be made up to the day of the first or only ordinary general meeting (*vide* the Third Schedule, Form E), (2) to be contained in a separate part of the register of members, (3) to be completed within seven days after the meeting, and (4) a copy duly signed together with the certificate of a director, manager, or secretary to be filed forthwith with the registrar. *Penalty: Fine not exceeding Rs.* 50 *per diem.*

Sec. 134. A copy of the balance-sheet, duly signed, (after the balance-sheet has been laid before the company in general meeting) to be filed with the registrar at the same time as the list and summary filed under section 32. Where the general meeting does not adopt the balance-sheet, a statement of the fact, and of the reasons therefor, to be annexed to the copy of the balance-sheet to be filed with the registrar. *Penalty. Fine not exceeding Rs.* 50 *per diem.*

Secs. 135, 146. Copies of the balance-sheet and of the auditor's report to be furnished to members and debenture-holders.

Sec. 83. Minutes to be kept of proceedings of general meetings.

Sec. 78. Extraordinary general meetings to be called on requisition.

Resolutions.

Sec. 82. Copies of special and extraordinary resolutions to be printed or type-written and filed with the registrar within fifteen days. *Penalty* [*under sub-sec.* (4)]: *Fine not exceeding Rs.* 20 *per diem.*

Resolutions—(contd.)

Every special resolution while in force to be embodied in or annexed to every copy of the articles (if registered) issued thereafter, or (where no articles are registered) forwarded in print to any member, at his request, on due payment. *Penalty* [*under sub sec* (5)] : *Fine not exceeding Rs.* 10 *per copy.*

Alteration of Memorandum.

Certified copy of the order confirming the alteration and a printed copy of the memorandum as altered, to be filed with the registrar (or registrars, on transfer of registered office) within three months from the date of the order. Sec. 15.

Copies of memorandum and articles (if any) to be furnished to members (on payment). *Penalty: Fine not exceeding Rs.* 10. Sec. 25.

Alteration, Consolidation, Increase, Re-organization, and Reduction of Share Capital and Conversion of Shares into Stock.

Copies of memorandum issued after alteration of share capital (which must be by special resolution) to be in accordance with the alteration. *Penalty. Fine not exceeding Rs.* 10 *per copy.* Sec. 50.

Notice of consolidation and division of share capital, conversion of shares into stock, and of re-conversion of stock into shares to be filed with registrar within fifteen days *Penalty: Fine not exceeding Rs.* 50 *per diem.* Sec. 51.

After conversion of shares into stock and filing of notice, the entries in the register and list of members to show stock held instead of the amount of shares and particulars relating to shares. Sec. 52.

Notice of increase of capital or of number of members (in case of a company not having a share capital) to be filed with registrar within fifteen days. *Penalty: Fine not exceeding Rs.* 50 *per diem.* Sec. 53.

Certified copy of order of Court confirming special resolution modifying the memorandum so as to re-organize the share capital to be filed with the registrar within twenty-one days after the making of the order. Sec. 54.

Alteration, Consolidation, Increase, Re-organization, and Reduction of share Capital and Conversion of Shares into Stock—(contd.)

Sec. 57. On confirmation of a resolution for reduction of share capital, the words "and reduced" to be added to the company's name unless the Court dispenses therewith.

Sec. 61. Order of Court confirming reduction to be produced to, and certified copy filed with, the registrar, with a minute (approved by the Court) of reduction.

Sec. 62. Minute of reduction of share capital when registered to be embodied in every copy of the memorandum issued after its registration. *Penalty: Fine not exceeding Rs.* 10 *per copy.*

Sec. 64. Names, claims, etc., of creditors entitled to object to reduction to be disclosed. *Penalty: Imprisonment which may extend to one year, or fine, or both.*

Unlimited liability of Directors.

Sec 70. Where, in a limited company, the liability of directors is unlimited, a proposal for election or appointment to office of director shall contain a statement that the liability of the person holding that office will be unlimited, and notice to the same effect to be given to the person proposed. *Penalty: Fine not exceeding Rs.* 1,000 *and the person responsible may be held liable in any damages which the person elected or appointed may sustain.*

Sec. 71. Special resolution of limited company making liability of directors unlimited to be embodied in every copy of memorandum issued after confirmation *Penalty: Fine not exceeding Rs.* 10 *per copy.*

British Register.

Sec. 41. Notice of the situation, and of any change in the situation of the office where the British register is kept and of the discontinuance of the British register to be filed with registrar within one month of opening, change, or discontinuance. *Penalty: Fine not exceeding Rs.* 50 *per diem.*

Sec. 42. British register to be kept in the same manner as the principal register; closing of the British register to be advertised locally; copies of entries to be transmitted to the registered office; duplicate, duly entered up, to be kept at

British Register—(contd.)

the registered office; shares registered therein to be distinguished; transactions relating to such shares not to be entered in any other register; on discontinuance, entries to be transferred to the principal register.

Share-warrants

Name of the bearer of a share-warrant, on his surrendering it for cancellation, to be entered as a member in the register of members (subject to the articles). *Company may be liable in damages if the name of a bearer of a share-warrant is entered in its register in respect of specified shares or stock without the warrant being surrendered and cancelled.* Sec. 45.

When share-warrants are issued, certain alterations to be made in the register of members. *Penalty: Fine not exceeding Rs. 50 per diem.* Sec. 47.

On surrender of a share-warrant the date to be entered in the register of members as if it were the date at which a person ceased to be a member. Sec 48

Receiver.

Appointment of receiver under order of Court or under power contained in an instrument to be registered by notice of the fact to be filed with the registrar within fifteen days. *Penalty: Fine not exceeding Rs. 50 per diem.* Sec. 118.

Receiver appointed under power contained in an instrument to file accounts, half-yearly while in possession, and on ceasing to act and notice of ceasing to act, with the registrar. *Penalty: Fine not exceeding Rs. 500.* Sec. 119.

Investigation and Inspection.

Information or explanation to be furnished to registrar. *Penalty: Fine not exceeding Rs. 50.* Sec. 137.

Books and documents to be produced to, and persons to submit to examination by, the inspector. *Penalty: Fine not exceeding Rs. 50.* Secs. 140, 142.

Seal for use outside British India.

Person authorised to affix and affixing to a document an official seal for use beyond the limits of British India to certify the date and place of affixing the same. Sec. 91.

Winding up.

Sec. 172. Copy of the winding up order to be filed forthwith by the company with the registrar.

Sec. 208. Liquidator in a voluntary winding up to file notice of his appointment with the registrar within twenty-one days thereafter. *Penalty: Fine not exceeding Rs 50 per diem.*

Companies established outside British India.

Sec. 277. This section imposes various obligations upon Companies incorporated outside British India which have at the time or after the Act comes into force a place of business in British India. To include its requirements in this table would involve, in effect, reproduction of the entire section, to which therefore reference should be made *Failure to comply with any of the requirements of the section involves liability to a fine not exceeding Rs 500, or, in the case of a continuing offence, to a fine not exceeding Rs. 50 per diem.*

APPENDIX E

INDIAN COMPANIES RULES.

1. These rules (*a*) may be called the Indian Companies Rules, 1914. **Short title.**

2. In these rules,

(1) the "Act" means the Indian Companies Act, 1913: **Definitions.**

(2) the "Schedule" means the Schedule hereto annexed:

(3) the decision of the Registrar as to the meaning of the words "responsible officer" shall be final.

3. Copies of contracts required to be filed with the Registrar under section 104 of the Act shall be deemed to be duly verified if they are, **Verification under section 104 of the Act.**

(1) certified copies as defined in section 76 of the Evidence Act (I of 1872), or

(2) certified by an affidavit of some responsible officer of the Company to be true copies.

4. A copy of an instrument by which a mortgage or charge is created or evidenced delivered to the Registrar for filing under section 109 of the Act, or a copy of a deed so delivered under section 110 of the Act, shall be deemed to be verified in the prescribed manner if it is, **Verification under sections 109 and 110 of the Act.**

(1) a certified copy as defined in section 76 of the Evidence Act: or

(2) certified by an affidavit of some responsible officer of the Company to be a true copy·

Provided that a copy of such an instrument or deed where the mortgage or charge comprises solely property situate outside British India shall be deemed to be so verified if it is certified to be a true copy under the seal of the Company or under the hand of some person interested therein otherwise than on behalf of the Company.

(*a*) Made under sec. 151 (*a*) by the Governor-General in Council and published in the *Gazette of India*, March 28, 1914. Pt. I, pp. 805—820.

Translations. 5. If any portion of any document required to be filed under the Act other than under section 277 thereof is not in the English language, a translation thereof, certified by a responsible officer of the Company to be correct, shall be furnished along with each copy deposited with the Registrar.

Fees for registering mortgages and charges. 6. The following fees shall be payable for the registration of mortgages and charges, namely :-

	Rs.
(1) For registering under sectione 110 of the Act particulars of a series of debentures,	
Where the total amount secured by the whole series does not exceed Rs. 2,000	5
Where it exceeds Rs. 2,000 ..	10
(2) For registering under section 112 (1) mortgages or charges created by a Company,	
Where the amount of the mortgage or charge does not exceed Rs. 2,000	5
Where it exceeds Rs. 2,000 ...	10
(3) For inspection under section 112 (3) of the registei of mortgages and charges	1
(4) For registration under section 118 of the appointment of a Receiver.	5

Certification of documents under section 277 of the Act. 7 A copy of a document required to be filed with the Registrar under section 277 of the Act shall be deemed to be certified in the prescribed manner .

A. In the case of a Company incorporated in a foreign country, if

(1) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, 52 and 53 Vict., c. 10 or in any Act amending the same, or

(2) duly certified as a true copy by a Notary of such foreign country, the certificate of the Notary being authenticated by any of the British officials mentioned in section 6 of the said Act or in any Act amending the same, or

(3) duly certified as a true copy on oath by some officer of the company before a person having authority to administer an oath as provided by section 3 of the said Act, the status of the person administering the oath being authenticated by any of the British officials mentioned in section 6 of the said Act or in any Act amending the same.

B. In the case of a Company incorporated in any part of His Majesty's dominions if it is

(1) duly certified as a true copy by an official of the Government to whose custody the original is committed, or

(2) duly certified as a true copy by a Notary Public of such place, or

(3) duly certified as a true copy on oath by some officer of the Company before some person having authority to administer an oath in such place

Certification of translations under section 277.

8 Translations of documents required to be filed with the Registrar under section 277 of the Act shall be deemed to be certified as correct translations if certified to be correct translations.

A. Where such translation is made out of British India by

(1) an official having custody of the original, or

(2) a Notary Public for the country or place where the Company is incorporated:

Provided that where the Company is incorporated in a foreign country, the signature or seal of the person so certifying shall be authenticated in either case by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, 52 and 53 Vict. c. 10 or in any Act, amending the same

B. Where such translation is made within British India

(1) by an Advocate, Attorney or Pleader entitled to appear before the High Court. or

(2) by an affidavit of some person having in the opinion of the Registrar, a competent knowledge of the language of the original and of English.

Power of Governor-General in Council to relax rules 7 and 8.

9. The Governor-General in Council may in any particular case if h thinks fit and upon such conditions as he may prescribe, permit certified copies or translations though not certified in accordance with rules 7 and 8 to be filed with the Registrar.

Times for filing alterations of particulars under section 277. 10 Notice of any alteration which is required by section 277 (*1*) of the Act to be filed with the Registrar shall be so filed within one month after the date on which particulars of the alteration could in due course of post, and if despatched with due diligence have been received by the Registrar from the place where the Company is incorporated.

Forms. 11. The Governor-General in Council further prescribes and directs that the forms in the Schedule or forms as near thereto as circumstances admit shall be used in all matters to which these forms relate

Payment of fees. 12. All fees payable under the Act may be paid either in cash or by revenue stamps

THE SCHEDULE

FORM I

Declaration on registration of Company

THE INDIAN COMPANIES ACT 1913

(*See section 24*)

Filing fee Rs. 5

Declaration of compliance with the requirements of the Indian Companies Act, 1913, made pursuant to section 24 (2) on behalf of a Company proposed to be registered as the- -

Presented for filing by- -

I———- -of- - — - do solemnly and sincerely declare that I am (*a*) of the- -------- - - and that all the requirements of the Indian Companies Act, 1913, in respect of matters precedent to the registration of the said Company and incidental thereto have been complied with. save only the payment of the fees and sums payable on registration And I make this solemn declaration conscientiously believing the same to be true

(*a*) Here insert—" An Advocate, Attorney or Pleader entitled to appear before a High Court who is engaged in the formation of the Company" or " a person named in the Articles as a Director, Manager or Secretary of the Company "

FORM II.

Consent of Director to act

THE INDIAN COMPANIES ACT, 1913.

(*See section* 84.)

Filing fee Rs 5.

Consent to act as Director of the——— ———to be signed and filed pursuant to section 84 (*1*) (*i*)

Presented for filing by— — — — — ———

To the Registrar of Joint Stock Companies—

(*a*) —————, the undersigned, hereby testify
(*b*) ——— consent to act as Director of the——— ——— pursuant to section 84 (*1*) (*i*) of the Indian Companies Act, 1913.

(*c*) Signature	Address	Description

Dated this — —day of— — ——19——.

Section 84 (*3*) of the Indian Companies Act, 1913, provides that—

" This section shall not apply to a private Company nor to a prospectus issued by or on behalf of a Company after the expiration of one year from the date at which the Company is entitled to commence business."

(*a*) Here insert " I " or " we."
(*b*) Here insert " my " or " our "
(*c*) If a Director signs by " his agent authorised in writing " the authority must be produced and a copy filed.

FORM III.

List of persons consenting to be Directors.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 84)

Filing fee Rs. 5.

List of the persons who have consented to be Director of the————————to be filed with the Registrar pursuant to section 84 (*2*).

Presented for filing by————————————

To the Registrar of Joint Stock Companies—

(*a*) ————, the undersigned, hereby give you notice, pursuant to section 84 (*2*) of the Indian Companies Act, 1913, that the following persons have consented to be Directors of the————

Name.	Address.	Description

Signature, address and description of applicant for registration }

Dated this———day of————19——.

Section 84 (*3*) of the Indian Companies Act, 1913, provides that—

"This section shall not apply to a private Company nor to a prospectus issued by or on behalf of a Company after the expiration of one year from the date at which the Company is entitled to commence business."

(*a*) Here insert "I" or "we."

FORM IV.

Declaration before commencing business in case of Company issuing a prospectus.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 103.)

Filing fee Rs. 5.

Declaration made on behalf of the (*a*)—————that the conditions of section 103 of the Act have been complied with

Presented for filing by——————————

I——————of——————being (*b*) of the——————(*a*) do solemnly and sincerely declare :—

That the amount of the share capital of the Company offered to the public for subscription is Rs.

That the amount fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the Company may proceed to allotment is Rs

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs.

That every Director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

I declare that the foregoing statements are true to my knowledge and belief.

Signature.

Date.

(*a*) Insert name of Company.
(*b*) Insert here "the Secretary" or "a Director."

FORM V.

Declaration before commencing business in case of Company filing statement in lieu of prospectus.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 103.)

Filing fee Rs. 5

Declaration made on behalf of the————(a) (which is a Company that has filed with the Registrar a statement in lieu of prospectus), that the conditions of section 103 of the Act have been complied with

Presented for filing by————

I————of————being (b) of the (a)————do solemnly and sincerely declare :—

That the amount of the share capital of the Company other than that issued or agreed to be issued as fully or paid up otherwise than in cash is Rs.

That the amount fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the Company may proceed to allotment is Rs.

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs.

That every Director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion, equal to the proportion payable on application and allotment on the shares payable in cash.

I declare that the foregoing statements are true to my knowledge and belief

Signature.

Date.

(a) Insert name of Company
(b) Insert here "the Secretary" or "a Director."

FORM VI.

Return of allotments.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 104.)

Filing fee Rs. 5.

Return of allotments from the (*a*) ——of—— 19——, to the ——of——, 19——, of the——

Made pursuant to section 104 (*1*).

(To be filed with the Register within one month after the allotment is made.)

(*b*) Number of the shares allotted payable in cash . . .

" " " " Nominal amount of the shares so allotted . . . .

" " " " Amount paid or due and payable on each such share . . .

" " " " " Number of shares allotted for a consideration other than cash . . . .

Nominal amount of the shares so allotted . . . .

Amount to be treated as paid on each such share . . .

The consideration for which such shares have been allotted is as follows :—

Presented for filing by

Names addresses and descriptions of the Allottees.

Name in full.	Address	Description	Number of shares allotted	
			Preference.	Ordinary

Signature.

(*a*) NOTE —In making a return of allotments under section 104 (*1*) of the Indian Companies Act, 1913, it is to be noted that :—

1. When a return includes several allotments made on different dates, the actual dates of only the first and last of such allotments should be entered at the top of the front page, and the registration of the return should be effected within one month of the first date
2. When a return relates to one allotment only, made on one particular date, that date only should be inserted, and the spaces for the second date struck out, and the word "made" substituted for the word "from" after the word "allotments". on the front page.

(*b*) Distinguish between preference, ordinary or other description of shares.

FORM VII.

Particulars of Oral Contracts.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 104 (*2*).)

Filing fee Rs. 5

This Form must bear a stamp of the value of the stamp duty that would have been payable if the contract had been reduced to writing.

Particulars prescribed under section 104, sub-section (*2*) of the Act.

Filed by (*a*)

Presented for filing by-

(1) The number of shares, in whole or in part, allotted for a consideration other than cash.	
(2) If the consideration for the allotment of any shares is services, or any consideration other than that mentioned below in part 3, state what such consideration consists of.	
(3) If the consideration for the allotment of any shares is a sale of property, or the agreement for the sale of property, state fully the consideration for, and other terms of, such sale or agreement for sale.	
(4) Give full particulars, in the form of the following table, of the property, which is the subject of the sale, showing in detail how the total consideration is apportioned between the respective heads—	
Immoveable property or interest in immoveable property wherever such immoveable property may be situate .	Rs
Patents, Licenses, Trade-marks and Copyrights .	
Goodwill	
Fixtures and fittings . .	
Book and other debts (including money on deposit at Bank or elsewhere)	
Benefits of contracts	
Other property, *viz* . . .	
TOTAL .	
(5) If the consideration payable is partly in respect of a sale of property or agreement for a sale of property, and partly in respect of some other consideration, state fairly how much of the amount of the consideration is attributable to each of the heads of the property sold or agreed to be sold, and how much to such other consideration.	
(6) If the consideration payable consists in the assumption by the purchaser of liabilities to third persons, specify the total amount of such liabilities	

Signature.

Designation of position in relation to the Company.

Date.

(*a*) Insert name of Company.

FORM VIII.

Statement as to the Commission where shares not offered to the public.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 105.)

Filing fee Rs. 5.

Presented for filing by— ——— ———

Statement by a Company, pursuant to section 105 of the Indian Companies Act, 1913, of the amount or rate paid, or agreed to be paid by way of commission in respect of shares

Name of Company	
Article of Association authorizing commission .	No.
Particulars of the amount paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares in the Company.	Paid Rs. Payable Rs.
or	
Rate of such commission .	Rate per cent.
Date of circular or notice, if any (not being a prospectus) inviting subscriptions for the shares and disclosing the amount or rate of the commission.	Date

Signature of the Directors or of their agents authorized in writing.

Date

FORM IX.

Particulars of mortgages and charges.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 109.)

Fee payable in accordance with rule.

Particulars to be filed with the Registrar pursuant to section 109 of a mortgage or charge created by the(*a*)

and being :—

(*a*) A mortgage or charge for the purpose of securing any issue of debentures ; or

(*b*) A mortgage or charge on uncalled share capital of the Company ; or

(*c*) A mortgage or charge on any immoveable property wherever situate or any interest therein ; or

(*d*) A motrgage or charge on any book debts of the Company ; or

(*e*) A floating charge on the undertaking or property of the Company.

NOTE—*Strike out the sub-heads* (*a*), (*b*), (*c*), (*d*), *or* (*e*) *which do not apply.*

(*a*) Insert name of Company

FORM NO. IX—*contd.*

Presented for filing by——————

Particulars of mortgage or charge created by the——————

1	2	3	4	5
Date of the instrument creating or evidencing the mortgage or charge and description thereof.	Amount secured by the mortgage or charge	Short particulars of the property mortgaged or charged	Names (with addresses and descriptions) of the mortgagees or persons entitled to the charge	Amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions whether absolute or conditional, for any of the debentures included in this Return

Signature.

Designation of position in relation to the Company.

Date.

FORM X.

Registration of Series of debentures

THE INDIAN COMPANIES ACT, 1913

(*See section* 110.)

Particulars to be filed with the Registrar pursuant to section 110, relating to a series of debentures containing, or giving by reference to any other instrument, any charge, to the benefit of which the debenture holders of the said series are entitled *pari passu* created by —— - - - —

Presented for filing by - -

Particulars to be filed with the Registrar pursuant to debentures created by—

1	2	3	4
Total amount secured by the whole series.	Amount of the present issue of the series.	Dates of Resolutions authorising the issue of the series	Dates of the covering deed (if any) by which the security is created or defined ; or, if there is no such deed, the date of the first execution of debentures of the series.

Designation of position in relation to the Company.

Date.

NOTES (1). The deed, if any, or a copy hereof verified in the prescribed the Registrar within twenty-one days after the execution of such deed; within twenty-one days after the execution of any debentures of the series

(2) The fees payable on the registration of these particulars are as

Where the amount secured by the whole series does not exceed
Ditto Ditto exceed

section 110 of the Indian Companies Act, 1913, of a series of

5	6	7
General description of the property charged.	Names of the Trustees (if any) for the Debenture-holders	Amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this Return

Signature.

manner containing the charge must be filed with these particulars with or, if there is no such deed, one of the debentures must be so delivered

follow :—

	Rs.
Rs. 2,000	5
Rs. 2,000	10

FORM XI.

Registration when more than one issue of the same series.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 100)

Filing fee Rs. 5.

The——————————

Statement of particulars as required by section 110 when more than one issue is made of debentures in a series.

Presented for filing by——————————

Particulars of an issue of debentures made by the——————————

To be entered on the register pursuant to the proviso to section 110 of the Indian Companies Act, 1913.

1	2	3
Date of present issue.	Amount of present issue.	Particulars as to the amount or rate per cent. of the commission allowance, or discount (if any) paid, or made, either directly or indirectly, by the Company, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions whether absolute or conditional, for any of the debentures included in this Return.

Signature.

Designation of position in relation to the Company.

Date.

NOTE —Section 110 above mentioned provides .—

(1) For registration of particulars of the entire series (for which purpose Form No. X must be used), and

(2) When there is more than one issue of debentures of the series for the registration of the amount and date of each issue (for which purpose this Form No. XI must be used).

The proviso to section 110 of the Indian Companies Act, 1913. provides that :—

Where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry on the register particulars of the date and amount of each issue.

FORM XII.

Form of Register of mortgages and charges and Index

THE INDIAN COMPANIES ACT, 1913

(*See sections* 112 *and* 121)

Register of Mortgages and Charges and of Memoranda of satisfaction of the ————————

Date of registration	Serial number of document on file.	Date of creation of each Mortgage or Charge and description thereof.	Amount secured by the mortgage or charge.	Short particulars of the property mortgaged or charged	Names of the mortgagees or persons entitled to the charge	PARTICULARS RELATING TO THE ISSUES OF DEBENTURES OF A SERIES								Amount or rate per cent. of the commission, allowance, or discount	RECEIVER	
						Total amount secured by a series of debentures.	Date and amounts of each issue of the series.		Date of the resolutions authorizing the issue of the series.	Date of the Covering Deed.	General description of the property charged.	Names of the Trustees for the Debenture Holders	Memoranda of satisfaction.		Name and date of appointment	Date of ceasing to act.
							Date	Amount.					Amount.			
1	2	3	4	5	6	7	8		9	10	11	12	13	14	15	
			Rs			Rs.		Rs.								

Form XIII.

Notice of appointment of a Receiver.

THE INDIAN COMPANIES ACT, 1913

(*See section* 118)

Filing fee Rs. 5.

Notice pursuant to section 118 as to the appointment of a Receiver.

The——— ——— Company——— ———

Presented for filing by——— ——— ———

To the Registrar of Joint Stock Companies

I——— of——— hereby give notice that:

(*a*) (1) I have obtained an order of the (*b*)——— dated ——— for the appointment of Mr——— ——— of——— ———
as Receiver of the property of this Company

(*a*) (2) On the———day of——— I appointed Mr. ———of———as Receiver of the property of this Company under the powers contained in an instrument (*c*) dated——— ———

Signature

Date.

NOTES —This notice must be filed within 15 days of the order or of the appointment under the instrument

The penalty for default is a fine not exceeding Rs. 50 for every day during which the default continues

---

(*a*) Of these two paragraphs strike out that which does not apply.
(*b*) Insert name of Court making the order.
(*c*) Describe fully the instrument under which appointment is made.

FORM XIV.

Abstract of Receiver's Accounts.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 119.)

No registration fee payable.

Name of Company.
Name and address of Receiver
Date and description of instrument under which Receiver is appointed
Date of taking possession
Period covered by the abstract { From— — / To— — }

ABSTRACT.

Signature.

Date.

Receipts.	Rs	A	P.	Payments	Rs	A.	P

FORM XV.

Notice to be given by a Receiver on ceasing to act as such.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 119.)

Filing fee Rs 5.

Name of Company——————
Presented for filing by——————
To the Registrar of Joint Stock Companies.

I, the undersigned,——of——hereby give you notice that I ceased to act as Receiver of the ———— Company, Limited, on the————day of————

Signature.

Date.

NOTE.—This notice must be filed by the Receiver on his ceasing to act as such. The penalty for default is a fine not exceeding Rs. 500.

Form XVI.

Lists of documents presented for filing under section 277.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 277)

Presented for filing by——————————

The (*a*)———— incorporated in (*b*)————and which has a place of business in British India, at————

Presents for filing, pursuant to section 277 (*1*) of the Indian Companies Act, 1913, the following documents:—

(A)(*c*)
(B)(*c*)
(C)(*c*)
(D)(*c*)

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913 (see below), or some other persons in British India duly authorised by the Company

Date.

NOTES.—Particulars of the documents required to be filed —

(Section 277 (*1*) of the Indian Companies Act, 1913).

(a) A certified copy of the charter, statutes or memorandum and articles of the Company, or other instrument constituting or defining the constitution of the Company, and, if the instrument is not written in the English language, a certified translation thereof.

(b) The full address of the registered or principal office of the Company,

(c) A list of the Directors and Managers (if any) of the Company;

(d) The names and addresses of some one or more persons resident in British India authorised to accept on behalf of the Company service of process and any notices required to be served on the Company

[The copies and translations (if any) above mentioned must be certified in the manner prescribed in these rules.]

(*a*) Insert name of Company

(*b*) Insert country of origin

(*c*) For the particulars of the documents required to be filed, details of which are to be inserted here, see below.

FORM XVII.

Lists of Directors and Managers required by section 277.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 277.)

Filing fee Rs. 5

Return pursuant to section 277 (*1*) by—

The(*a*)— — incorporated in(*b*)— — —and which has a place of business in British India at— — — —of a list of its Directors and Managers

Presented for filing by— — — — —

List of Directors of the

Names of Directors and Managers.	Addresses of Directors and Managers.	Descriptions or occupations of Directors and Managers.

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date.

(*a*) Insert name of Company. (*b*) Insert country of origin.

FORM XVIII.

Return of persons authorised to accept service under section 277.

THE INDIAN COMPANIES ACT. 1913

(*See section* 277)

Filing fee Rs 5

Return pursuant to section 277 (*1*) by—

The(*a*)———— incorporated in(*b*) ———which as a place of business in British India at - of the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

Presented for filing by

List of persons authorised to accept service on behalf of the Company.

Names of persons.	Addresses.	Descriptions or occupations

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date.

(*a*) Insert name of Company. (*b*) Insert country of origin

FORM XIX.

Notice of alteration in Charter, etc., under section 277.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 277.)

Filing fee Rs. 5.

The (*a*)— ————————

Notice of alteration in the charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of the Company.

Pesented for filing by ————————

Notice is hereby given, pursuant to section 277 (*1*) of the Indian Companies Act, 1913, by the (*a*) ——— incorporated in (*b*)——— and which has a place of business in British India at——— of alteration in the(*c*) ——— constituting or defining the constitution of the Company.

Certified copy of alteration with certified copy of new deed, if one has been executed, and certified translation of alteration or and deed, if not in the English language, must accompany this notice and be shortly referred to here.

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post and if despatched with due diligence, have been received in British India from the place where the Company is incorporated.

(*a*) Insert name of Company.

(*b*) Insert country of origin.

(*c*) Insert "charter," "statutes," "memorandum" or "articles," or other instrument, as the case may be. The copy and translation (if any) must be certified in the manner prescribed in these rules.

FORM XX.

Notice of alteration in the address of the registered or principal office of the Company under section 277.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 277)

Filing fee Rs. 5.

Presented for filing by———————

Notice is hereby given, pursuant to section 277 (*1*) of the Indian Companies Act, 1913, by the(*a*)——————incorporated in(*b*)——————and which has a place of business in British India at——————of alteration in the address of the registered or principal office of the Company.

Previous address.	Present address	Date of change.

Signatures of the persons authorised under section 277 of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date.

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the Company is incorporated

(*a*) Insert name of Company. (*b*) Insert country of origin.

FORM XXI.

Notice of alteration of Directors or Managers.

THE INDIAN COMPANIES ACT, 1913.

(*See section* 277.)

Filing fee Rs. 5.

Notice of alteration in the list of Directors or Managers of the(*a*)————

Presented for filing by————

Notice is hereby given, pursuant to section 277 (*1*) of the Indian Companies Act 1913, by the (*a*)———— incorporated in(*b*)————and which has a place of business in British India at ————of alteration in the list of Directors and Managers.

Names of Directors and Managers.	Addresses of Directors and Managers	Descriptions or occupations of Directors and Managers.	Remarks as to the alteration

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the Company is incorporated.

(*a*) Insert name of Company. (*b*) Insert country of origin.

FORM XXII.

Notice of alteration in the names or addresses of persons authorised to accept process

THE INDIAN COMPANIES ACT, 1913

(*See section* 277.)

Filing fee Rs. 5

The (*a*)— — — — — — — — —

Notice of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the Company service of process and any notices required to be served on the Company

Presented for filing by— — — — —

Notice is hereby given, pursuant to section 277 (*1*) of the Indian Companies Act, 1913, by the (*a*) — — — incorporated in (*b*)— — — and which has a place of business in British India at of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

(*c*) *Particulars of alteration*

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company }

Date

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the Company is incorporated

---

(*a*) Insert name of Company.

(*b*) Insert country of origin.

(*c*) Where any persons are appointed, the full names, addresses, and descriptions of the persons so appointed should be given.

FORM XXIII.

Statement of affairs under section 277.

THE INDIAN COMPANIES ACT, 1913.

(*See section 277.*)

Filing fee Rs. 5

Statement in the form of a balance sheet by the (*a*)————
————————

Presented for filing by ————————————

Return pursuant to section 277 (*3*) (*a*) of the Indian Companies Act, 1913, by—

The (*a*)- ————incorporated in (*b*) ———— and which has a place of business in British India at ———— of a statement in the form of a balance sheet audited by the Company's auditors (*c*) ——— ———and made up to———— day of ————

Signatures of the persons authorised under section 277 (*1*) (d) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the Company.

Date.

Section 277 (*3*) (*i*) of the Indian Companies Act, 1913, is as follows :—

' (3) Every Company to which this section applies shall in every year file with the Registrar of the Province in which the Company has its principal place of business—

(*i*) in a case where by the law for the time being in force of the country in which the Company is incorporated such Company is required to file with the public authority an annual balance sheet—a copy of that balance sheet : or

---

(*a*) Insert name of Company. (*b*) Insert country of origin.
(*c*) Insert names and addresses of auditors.

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the Company is incorporated—such a statement in the form of a balance sheet as such Company would if it were a Company formed and registered under this Act, be required to file in accordance with the provisions of this Act.

Provided that the Governor-General in Council may, by notification in the *Gazette of India* subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such Company or any class of such Companies from this requirement."

The form of a balance sheet is prescribed in section 132 which is as follows:—

"(1) The balance sheet shall contain a summary of the property and assets and of the capital and liabilities of the Company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit."

APPENDIX F.

RULES OF THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL UNDER THE INDIAN COMPANIES ACT, 1913 BOTH FOR THE HIGH COURT AND THE COURTS SUBORDINATE THERETO(a).

General headings.

1. The following shall be used as general headings in all cases under these rules relating to companies in the High Court and in the Courts subordinate thereto :—

A.—For proceedings before the Judge in Chambers or in Court :—

In the High Court of Judicature at Fort William in Bengal (or in the District Court of) (as the case may be)

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

B. For all advertisements, notices and other proceedings not before the Judge in Chambers or in Court :—

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

C.—In cases where it is required, the words "and reduced" shall be added to the description of the company.

Presentation and hearing of petitions and of all applications and proceedings. Presentation, etc., of petitions, etc.

2. In the High Court all petitions shall be presented, applications made to, and proceedings taken under the direction of the Judge who may be sitting in Chambers for the time being : Provided nevertheless that the Judge may refer any matter so brought before him into Court, or to any other

(a) Published in the *Gazette of India*, February 14, 1914, Pt. II p. 405. For amendments see *Calcutta Gazette*, May 24, 1916, Pt. I, p. 953. Rules 6 to 22 are similar to the Reduction of Capital Rules framed under the Companies (Consolidation) Act, 1908, but no attempt has been made to bring the winding up rules, Nos. 24 to 89 into conformity with the 221 rules framed under the English Act and known as the Company (winding up) Rules, 1909. The winding up rules here given are based upon the rules in force in Bombay and upon the Bengal rules framed under Act XX of 1866. It is to be noted, however, that Rule 95 provides for the application (in cases not provided for by these rules) of the practice and procedure of the High Court of Justice in England so far as they are applicable and not inconsistent with these rules and the Act.

Judge of the High Court. In the Courts subordinate to the High Court all petitions shall be presented, applications made to and proceedings taken under the direction of the Judge for the time being of the District Court within whose jurisdiction the principal office of the company may be situate

General rules, practice and procedure applicable to proceedings to reduce capital.

3 The rules of the Original Side of the High Court for the time being in force. and the general practice of that Court, including the course of procedure and practice in Chambers, shall apply as regards all proceedings under the Act in relation to Companies so far as may be applicable, except if and so far as by the Act or this Chapter otherwise provided.

Petition to reduce capital.

4 The petition for an order confirming a special resolution for reducing the share capital of a company shall be presented to the Judge in Chambers.

Application to dispense with "and Reduced."

5 An application for an order dispensing with the addition of the words "and Reduced" may be made *ex parte* in Chambers at or after the presentation of such petition, provided the Judge may direct notice to be given of such application or adjourn the consideration thereof as he may think fit.

Procedure where creditors are not entitled to object.

5A. In a case where the creditors of a company are not entitled, under the provisions of section 58 of the Act, to object to the proposed reduction, the obtaining of the certificate provided for by rule 16 of this Chapter shall not be necessary; but on the presentation of the petition the directions of the Judge (which should be asked for in the petition) may be taken that a day be fixed for the hearing of the petition and as to the advertisements which are to be published.

Procedure where creditors are entitled to object

6. In a case where the creditors are entitled to object to the proposed reduction, application may be made *ex parte* by summons to the Judge in chambers for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the Judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to section 58 of the Act; and may either at the same time or afterwards, as he shall think fit give such directions as are mentioned in rules 7, 8, 11, 12 and 13 of this Chapter. The order may be in Form No. 1.

The proceedings under the order shall be continued by adjournment and, where necessary, by further summons, and any such directions as aforesaid may be given added to or varied at any subsequent time as may be found necessary.

7. Notice of the presentation of the petition shall be published at such times and in such newspapers in English and in the vernacular as the Judge shall direct, so that the first insertion of such notice be made not less than one month before the day of the date fixed, as mentioned in the last preceding rule. Such notice may be in Form No. 2. **Advertisement of petition.**

8. In cases within section 58 (1) of the Act the company shall, within such time as the Judge shall direct, file in Court an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in rule 7; and the nature and amounts of the debts due to them respectively, or in case of any debt payable on a contingency or not ascertained, or any claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated, of such debt or claim. **Affidavit as to creditors.**

9. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim which (were that date the commencement of the winding up of the company) would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in Form No. 3. **Form of affidavit.**

10. Copies of such list, containing the names and addresses of the creditors and the total amount due to them, but omitting the amounts due to them, respectively, or (as the Judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the offices of their attorneys and agents (if any), and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee. **Inspection of list of creditors.**

11. The company shall, within seven days after the filing of such affidavit or such further time as the Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduc- **Notice to creditors.**

tion of capital, and the amount or estimated value of the debt for which such creditor is entered in the said list and the time (such time to be fixed by the Judge) within which, where he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company; and such notice shall be sent through the post in a registered letter addressed to each creditor at his last known address or place of abode, and may be in Form No. 4: Provided that where any of the creditors of the company are residing out of British India, or where the names of any of the creditors are not known to the company, the Judge may direct notice to be given to them by advertisement in such papers and at such times as he may think proper.

Advertisement as to list of creditors.

12. Notice of the list of creditors shall, after the filing of the affidavit mentioned in rule 8, be published at such times and in such newspapers as the Judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of the creditors may be inspected and the time within which creditors of the company whose names are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their attorneys (if any) to the attorney of the company; and such notice may be in Form No 5.

Affidavit as to result of rules 11 and 12.

13. The company shall, within such time as the Judge shall direct, file in Court an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in rules 11 and 12 required to be sent in, stating the result of such notices, respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices, respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in Form No. 6.

14. Where any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim, the company shall, where the Judge thinks fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named being not less than fourteen clear days after such notice, and being the time appointed by the Judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in rule 11, and may be in Form No. 7. **Proceedings where claim not admitted.**

15. Such creditors as come in to prove their debts or claims in pursuance of such notice as is mentioned in rule 14 shall be allowed their costs of proof against the company and such costs shall be added to their debt; or the said creditors may be answerable for costs in the event of their proof not being established. **Costs of proof.**

16 The result of the settlement of the list of creditors shall be stated in a certificate which shall be signed by the Judge, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 59 of the Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 59 of the Act and the person to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid. **Certificate by the Judge as to creditors.**

17. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition shall be set down for hearing, in the ordinary course, upon a *præcipe* **Petition to come on for hearing.**

addressed to the Registrar by the petitioner or his attorney, to have the petition set down for hearing.

Advertisement of hearing.

18. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers, in English and in the vernacular, as the Judge shall direct. Such notices may be in Form No. 8.

Who may appear.

19. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined or been secured in manner provided by section 59 of the Act, and who has not before the hearing consented to the proposed reduction of capital, may, where he thinks fit, upon giving two clear days' notice to the attorney of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

Costs of appearance.

20. Where a creditor who appears at the hearing under the last preceding rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of whose debt or claim has not been inquired into and adjudicated upon under section 59 of the Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Directions at hearing.

21. Where the petition comes on to be heard, the Judge may, where he shall so think fit, give such directions as may seem proper with reference to the securing, in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, where the Judge shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Order confirming reduction.

22. Where the Judge makes an order confirming a reduction, such order shall give directions in what manner and in what newspapers, in English and the vernacular, and at what times notice of the registration of the order and of such minute, as is mentioned in section 61 of the Act, is to be published; and (unless it shall have dispensed altogether

with the addition of the words "and Reduced" or shall then dispense with the further use thereof) shall fix the date until which the words "and Reduced" are to be deemed part of the name of the company as mentioned in section 57 of the Act.

23. Where the Judge should think fit to require the company to publish the reasons for the reduction of its capital or any other information with regard thereto, or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and in the vernacular, as the Judge shall think proper.

Publication of reasons for reduction, etc.

24. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be advertised 14 clear days before the hearing as follows:—

Petition to wind up company. Advertisement of.

(1) In the case of a company whose registered office, or where there shall be no such office, then whose principal or last known principal place of business is, or was, situate within the local limits of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta, once in the *Calcutta Gazette*, and once at least in two English daily newspapers and two vernacular newspapers published in Calcutta.

(2) In the case of any other company once in the *Calcutta Gazette* and once at least in two local newspapers or where there should be none such, in two newspapers circulating in the district where such registered office or principal or last known principal place of business, as the case may be, of such company, is or was situate, and also by proclamation affixed to the walls of the Court House.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner and of his attorney (if any). (Form No. 9.)

25. Every such petition shall, unless presented by the company, be served at the registered office (if any) of the company, and where there is no registered office, then at the principal or last known principal place of business of the company where any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then

Service of petition.

by being left at such registered office or principal place of business or by being served on such member or members of the company as the Judge may direct; and every petition for the winding up of a company subject to the supervision of the Court shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company. So also every petition for the compulsory winding up of a company shall be served upon the liquidator (if any) who may have been appointed to act in a voluntary winding up or in a winding up under supervision, as the case may be.

Affidavit verifying petition.

26. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto in Form No. 10: such affidavit shall be made by the petitioner or by one of the petitioners, where more than one, or in case the petition is presented by the company by some director, secretary or other principal officer thereof and shall be made and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements, in the petition. Where the petition is presented by a corporate body, other than the company itself, the affidavit shall be made by some director, secretary or other principal officer of such corporate body: Provided that where the petitioner is by reason of absence or for other good cause unable to verify such petition the same may be verified by any person duly authorised by him in that behalf or deemed by the Court competent to verify the same.

Copies of petition to be supplied.

27. Every contributory or creditor of the company shall be entitled on application to the Court or to the attorney of the petitioner to be furnished with a copy of the petition within twenty-four hours after requiring the same on payment to the Court of the usual court-fees or to the attorney of the usual charges.

Petition not to be dismissed, if any creditor desire to take advantage of it.

28. Where a petition to wind up has been presented the petitioner shall not be entitled to have it dismissed, where any creditor appears and proves his debt and is desirous of taking advantage of the petition.

Order to wind up company Advertisement and service of petition.

29. Every order for the winding up of a company by the Court, or subject to its supervision, shall within twelve days after the date thereof be advertised by the petitioner once in the *Gazette of India* and once in the *Calcutta Gazette*, and otherwise as the Court may direct and shall be

served upon such person (if any), and in such manner as the Court may direct. (Forms Nos. 11, 12 and 13.)

30. Within ten days after any order for the winding up of a company has been sealed, a summons at Chambers shall be taken out by the petitioner to proceed with the winding up of the company, and in default thereof such summons may be taken out by any other person interested in the winding up to whom the Judge may think fit to give the conduct and prosecution of the said order, and in either case such summons shall be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, where the Judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts and for the list of contributories to be brought in and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon The proceedings under the order shall be continued by adjournment, and, where necessary, by further summons, and any such directions as aforesaid may be given, added to, or varied, at any subsequent time as may be found necessary. **Proceedings on orders.**

31. The Judge may appoint a person to the office of official liquidator without any previous advertisement or notice to any party or may fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated **Appointment of official liquidator.**

32. Where a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed. (Forms Nos 14 and 15.) **Advertisement as to appointment.**

33. Every official liquidator, where ordered to give security, shall do so by entering into a Bond with one or more sufficient sureties, or by depositing Government securities in such sum as the Court may approve. (Forms Nos. 16, 16A and 17.) **Security of official liquidator.**

34. The official liquidator shall be appointed by order; and unless he shall have given security, a time shall be fixed by such order within which he is to do so, and the order shall fix the times or periods at which the official liquidator is to **Order appointing official liquidator.**

file his accounts of receipts and payments and shall direct that all moneys to be received shall be paid into Court or in the Bank of Bengal or branch thereof nearest to the principal place of business of the company, or in the case of a District Court into that Court, immediately after the receipt thereof to "the account of the official liquidator of the company" and an account shall be opened there accordingly, and if the money is payable into the Bank of Bengal or branch thereof an office copy of the order shall be lodged at the Bank of Bengal or branch thereof as aforesaid. (Form No. 18.)

Certificate of security given.

35. Where an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the Registrar or the District Judge, as the case may be.

Fresh security when required.

36. The official liquidator shall on each occasion of passing his account and also wheresoever the Judge may so require satisfy the Judge that his sureties are living, and resident in British India and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

Advertisement of appointment made.

37. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct immediately after he has been appointed and has given security. (Form No. 19.)

Provisional official liquidator.

38. Where it is desired to appoint provisionally an official liquidator an application for that purpose may, at any time after the presentation of the petition for winding up the company, be made by petition without advertisement or notice to any person unless the Judge shall otherwise direct; and such provisional official liquidator may, where the Judge shall think fit, be appointed without security. (Form No. 20.)

Vacancy in office of official liquidator.

39. In case of the death, removal, or resignation of an official liquidator, another shall be appointed in his room. in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorised by the Judge to take the same.

Accounts.

40. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company;

and shall provide and keep such books of account or otherwise as shall be necessary or as the Judge may direct for the purposes aforesaid and for showing the debts and credits of the company and all such matters as may be necessary to give a correct view of his administration of the company's affairs including :—(a) a cash book in which he shall enter from day to day the receipts and payments made by him; (b) a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and the rules in this Chapter; and (c) a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories and all such matters as may be necessary for the purposes aforesaid, but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories).

Remuneration.

41. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the Judge may from time to time direct, and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter as the Judge may think fit, and the sum may be so fixed as to cover the expenses of the employment of assistants or clerks by the official liquidator, and also his office rent, stationery, etc., unless the Judge shall otherwise order. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any) and supported by such evidence as the Judge shall require, nevertheless the Judge may from time to time allow any sum he may think fit to the official liquidator on account of the salary or remuneration to be thereafter allowed.

Passing accounts.

42. The accounts of the official liquidator shall be filed at such time as may from time to time be ordered by the Judge, and shall, upon notice to such persons (if any) as the Judge shall direct, be passed or verified as may be ordered.

Joint official liquidators.

43. Where joint official liquidators are appointed the above rules relating to the official liquidators shall be applicable *mutatis mutandis*.

Proof of debts. Advertisement for creditors.

44. For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims an advertisement shall be issued at such time as the Judge shall direct, and such advertisement shall fix the time for the creditors to send their names and addresses and the particulars of their debts or claims and the names and addresses of their attorneys (if any), to the official liquidator, and appoint a day for adjudicating thereon. (Form No. 21.)

Attendance of creditors.

45. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

List of debts.

46. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company and he shall make out and file in Court a list of all debts and claims sent in to him, distinguishing which of the debts and claims or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence and which of them in his opinion ought to be proved by the creditors, and he shall make and file, prior to the time appointed for adjudication, an affidavit (Forms Nos. 22 and 23) setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

Allowance of debts.

47. At the time appointed for adjudicating upon the debts and claims or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance. (Form No. 24.)

Proof of debts.

48. The official liquidator shall give notice (Form No. 25) to the creditors whose debts or claims have not been allowed upon his affidavit that they are required to come in and prove the same (Form No. 26) by a day to be therein named, being not less than four days after such notice, and

to attend at a time to be therein named, being the time appointed by the advertisement or the adjournment (as the case may be) for adjudicating upon such debts and claims.

49. The value of all debts and claims against the company shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company. **Estimation of value of debts and claims.**

50. Creditors whose debts and claims carry interest, and are allowed, shall be entitled to receive dividends upon what was due for principal and interest at the date of the winding up. In the event of there being a surplus the dividends payable to such creditors shall be applied, firstly, towards payment of the interest, and, secondly, in reduction of the principal due to them. **Dividends payable, principal and interest.**

Interest may be allowed on all claims in respect of which it is recoverable as damages.

51. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof which will be added to the debt. **Cost of proof**

52. The result of the adjudication upon debts and claims shall be in the form of a certificate (Form No. 27) to be signed by the Judge from time to time as convenience may require, and such certificate shall state whether the debts or claims are allowed or disallowed and whether allowed as against any particular assets or in any other qualified or special manner. (Form No. 28.) **Judge's certificate of debts.**

53. The official liquidator shall, with all convenient speed, after his appointment, or at such time as the Judge shall direct, make out and file in Court a list of the contributories of the company; and such list shall be verified by the affidavit (Forms Nos. 29 and 30) of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory and distinguish the several classes of contributories. And such list may from time to time by leave of the Judge be varied or added to by the official liquidator. (Form No. 31.) **List of contributories.**

54. Upon the list of contributories being filed in Court, the official liquidator shall obtain an appointment for the Judge to settle the same, and shall give notice (Form No. 32) in writing of such appointment to every person included in **Notice of appointment to settle.**

such list, and stating in what character and for what number of shares or interest such person is included in such list, and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served (Forms Nos. 33 and 34) four clear days before the day appointed to settle such list or such variation or addition. (Forms Nos. 35 and 36.)

Judge's certificates.

55. A list of contributories as the same shall have been settled (Form No 37) by the Judge shall from time to time (where the Judge shall so order) be drawn up by the official liquidator and signed by the Judge for the purpose of stating the result of such settlement down to any particular time, or as to any particular person or stating any variation of the list.

Sales of property.

56. Any movable or immovable property belonging to the company may be sold with the approbation of the Judge in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, where the Judge shall so direct, by the official liquidator, in which case the conditions or contracts of sale shall be settled and approved of by the Judge unless he shall otherwise direct; and unless on account of the small amount of the purchase-money or other cause it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase-money shall be paid to him, all conditions and contracts of sale shall provide that the purchase-money shall be paid by the respective purchasers into Court or into the Bank of Bengal or the branch thereof nearest to the principal place of business of the company to the account of the official liquidator of the company, or in the case of a District Court, into that Court. (Form No. 38.)

Calls. Summons for call.

57. Every application to the Judge to make any call (Form No. 39) on the contributories or any of them, for any purpose authorized by the Act, shall be made by summons (Form No. 40) in Chambers, stating the proposed amount of such call; and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call or if the Judge shall so direct, notice of such intended call may be given by advertisement (Form No. 41) or such other public notification as the Judge in his discretion may think sufficient.

58. Where any order (Form No. 42) for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice (Form No. 43) from the official liquidator specifying the amount of balance due from such contributory, having regard to the provisions of the Act in respect to such call; but such order need not be advertised unless for any special reason the Judge shall so direct. **Service of order.**

59 At the time of making an order for call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment or upon a summons in Chambers to enforce payment of the call duly served and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them, respectively. (Forms Nos. 44, 45 and 46.) **Proceedings under order.**

60. Where any official liquidator shall not pay all the moneys recieved by him into Court or into the Bank of Bengal or the branch thereof nearest to the principal place of business of the company, or in the case of a District Court into that Court, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the Judge shall have otherwise directed, such official liquidator shall be charged in his account with rupees ten for every thousand rupees and a proportionate sum for any larger amount retained in his hands beyond such period for every seven days during which the same shall have been so retained, and the Judge may, for any such retention, disallow the salary or remuneration of such official liquidator. **Payment of moneys and deposit of securities. Default of payment into Bank.**

61. All bills, hundis, notes and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in Court or in the Bank of Bengal or the branch thereof nearest to the principal place of business of the company, or in the case of a District Court in that Court, for the purpose of being presented for acceptance and payment, or for payment only, as the case may be. (Form No. 38.) **Bills, etc., to be deposited in Bank.**

Calls, etc., to be paid into Bank.

62. All orders for payment of calls, balances or other moneys due from any contributory or other person shall direct the same to be paid into Court or into the Bank of Bengal or the branch thereof as aforesaid or in the case of a District Court into that Court, to the account of the official liquidator of the company unless on account of the smallness of the amount or other cause, it shall having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator; provided that where any such order had been made directing payment of a specific sum into Court or into the Bank of Bengal or a branch thereof, or in the case of a District Court into that Court, as aforesaid, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice for payment of the same sum to the official liquidator.

Notice as to payment into Bank.

63. At the time of the service of any order for payment into Court or into the Bank of Bengal or branch thereof or into a District Court as aforesaid, the official liquidator shall give to the party served a notice in Form No. 47, for the purpose of informing him how the payment is to be made, and before the time fixed for such payment the official liquidator shall furnish the Registrar or the Secretary and Treasurer of the Bank of Bengal, or the Agent or Manager of the branch thereof as aforesaid, as the case may be, or in the case of a District Court the Nazir thereof, with a certificate in Form No. 48 to be signed by such Registrar or Secretary and Treasurer or Agent or Manager or Nazir as the case may be and delivered to the party paying in the money therein mentioned.

Affidavit of non-payment.

64. For the purpose of enforcing any order for payment of money into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, an affidavit of the official liquidator in Form No. 49 shall be sufficient evidence of the non-payment thereof.

Title of account in Bank.

65. All money, bills, hundis, notes and other securities paid and delivered into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be placed to the credit or account

of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of securities, payment out and investment of money. Requests and cheques.

66. All bills, hundis, notes and other securities delivered into Court or into the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be delivered out upon a request signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court, or the Registrar under the orders of the Judge, and moneys placed to the account of the official liquidator shall be paid out upon such cheques or orders signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court, or by the Registrar under the orders of the Judge. (Form No. 38.)

Investment.

67 All or any part of the money for the time being standing to the credit of the account of the official liquidator in Court or at the Bank of Bengal or a branch thereof as aforesaid, or in the case of a District Court in that Court, and not immediately required for the purposes of winding up, may be invested in the purchase of Government Promissory Notes in the name of the official liquidator. All investments of moneys in Court or in the Bank of Bengal or a branch thereof as aforesaid shall be made upon a request (Form No. 50) signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court or by the Registrar under the orders of the Judge, and all investments of moneys standing to the credit of the account of the official liquidator in a District Court shall be made upon a request (Form No. 51) signed by the official liquidator and addressed to such Court: such request, respectively, shall be sufficient authority for debiting the account with the purchase-money: and such Government notes shall be retained by or deposited with the Court or the Bank of Bengal or by or with the said District Court in the name and on behalf of the official liquidator, and such notes shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court or by the Registrar under an order made by the Court or the Judge.

Receipt of dividends.

68. All dividends and interest to accrue due from any such notes shall from time to time be received by the Court or the Bank of Bengal (under a power of attorney to be executed by the official liquidator) and placed to the credit of the account of such official liquidator, and when any of such

notes shall become payable the same shall be renewed or the principal and interest due thereon be received and placed to the credit of the account of the official liquidator.

Meetings of creditors or contributories. Notice.

69. Where the Court or a Judge shall direct a meeting of the creditors or contributories of the company to be summoned under section 239 of the Act, the official liquidator shall give notice (Form No. 52) in writing seven clear days before the day appointed for such meeting to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which the Court or Judge desires to ascertain the wishes of the creditors or contributories, or where the Court or Judge shall so direct, such notice may be given by advertisement in the daily papers, in which case the object of the meeting need not be stated and it shall not be necessary to insert such advertisement in the *Calcutta Gazette* or the *Gazette of India*. (Form No. 53.)

Votes.

70. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the Court or a Judge may be given either personally or by proxy, but no creditor shall appoint (Form No. 54) a proxy who is not a creditor of the company, whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company. The Chairman of the meeting shall certify the result thereof. (Form No. 53.)

Memorandum as to calling meeting.

71. The direction of the Judge for any meeting of creditors or contributories under section 140 or 193 of the Act, and the appointment of a person to act as Chairman of any such meeting shall be testified by a memorandum (Form No. 55) signed by a Judge, or by the Registrar under the direction of the Judge. (Form No. 53.)

Direction or sanction of the Judge to bills of exchange, etc.

72. The sanction of the Judge to the drawing, accepting, making and endorsing of any bill of exchange, hundi or promissory note by any official liquidator shall be testified by a memorandum (Form No. 56) on such bill of exchange or promissory note signed by the Judge or one of the Judges of the Court, or by the Registrar under the direction of the Judge.

Compromise.

73. Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the company (Form No. 57) shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person: and stating his belief that the proposed compromise will be beneficial

to the company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum (Form No. 58) signed by a Judge, or by the Registrar under the orders of the Judge, on the agreement or compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

Other cases.

74. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator under the powers conferred on him by section 179 shall be obtained upon petition verified by affidavit and an order (Form No. 59) shall be drawn up thereon, unless the Judge shall otherwise direct.

Application to the Court under sections 181, 185 and 216 of the Act. Application how made.

75. Every application under sections 212 (2) and 215 of the Act shall be made by petition or, where the Court shall so direct by summons in Chambers, and every application under section 237 of the Act shall be made by petition.

Insertion of advertisements.

76. Where an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *Calcutta Gazette* and in such other newspaper or newspapers and for such number of times as may be directed. The Judge, however, may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

Affidavits. Filing and office copies of affidavits.

77. Where an order shall have been made for the winding up of any company, any person intending to use any affidavit in any proceeding under such order shall file the same in Court, and serve a copy thereof on the official liquidator. The person other than the official liquidator filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Judge shall otherwise direct.

Register of proceedings.

78. A register shall be kept by the Court of all proceedings in each matter in a book set apart for that purpose.

Provisional official liquidator.

79. All the above rules relating to official liquidators shall, so far as the same are applicable and subject to the directions of the Court or the Judge in each case, apply to provisional liquidators.

Attendance and appearance of parties.

80. No order to the prejudice of contributories or creditors shall be made *ex parte* on the application of the official liquidator and every person for the time being on the list of contributories of the company filed by the official liquidator and every person having a debt or claim against the company allowed by the Judge shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of, but if the Judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company. he may direct such costs or a gross sum in lieu thereof to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

Appointment of representative party.

81. The Judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit to represent before him at the expense of the company all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors or in and about any other proceedings before him relating to the winding up of the Company, and may remove the person or persons so appointed In case more than one person shall be so appointed they shall unite in employing the same attorney to represent them.

Appearance to be filed before attendance.

82. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he has filed an appearance with the Registrar. A book to be called the Appearance Book shall be kept in which all such appearances shall be entered. (Form No. 60.)

Service of summons, notices, etc. Service how effected.

83. Services upon contributories and creditors shall be effected, except where personal service is required, by sending the notice, or a copy of the petition, summons or order or other proceedings, through the post in a registered letter, addressed to the attorney (if any) of the party to be served or otherwise to the party himself, if a contributory, to his last known address or place of abode, and is a creditor, to the address given by him pursuant to rule 44 and such notice or copy, summons, order, or other proceedings shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office, and notwithstanding the same may be returned by the Post Office.

84. No service under these rules shall be deemed invalid by reason that any name other than the surname of the person (where the said person is a European) or any name other than the final name ordinarily used by the person (being other than a European) on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the Court is satisfied that such service is in other respects sufficient. **Name of person incomplete.**

85. Applications for the transfer of winding up proceedings either from the High Court to a District Court, or from one District Court to another, as the case may be, shall be made by petition which shall be filed in Court. Upon the filing of such petition as aforesaid the Judge shall give such orders and directions and direct that an advertisement hereof be made as the nature of the case may require, and shall fix a date for the hearing of such petition. **Transfer of winding up from High Court to District Court under sections 218 and 219 of the Act.**

86. Where the petition in the last preceding rule has been heard and order thereon passed by the Court, the Court shall thereupon make an order (Forms Nos 61 and 62) for transferring the winding up proceedings. **Order for transfer.**

87. Upon the termination of the proceedings for the winding up of any company, a balance sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit, and the official liquidator shall pass his final account and the balance (if any) due on the final account shall be certified by the Judge, and upon payment by the official liquidator of the balance (if any) in such manner as the Judge shall direct, the recognisances entered into by the official liquidator and his sureties may be vacated. (Form No. 63.) **Termination of winding up proceedings.**

88. Where the official liquidator has passed his final account and the balance (if any) due thereon has been paid in such manner as the Judge shall direct, the official liquidator shall in case the company has not been already dissolved, apply to the Judge for an order that the Company be dissolved from the date of such order. (Form No. 64.) **Dissolution of company.**

89. Where the proceedings for winding up any company have been completed, the file of proceedings and the book containing the official liquidator's account shall be deposited in the records of the Court. **Deposit of proceedings in Court.**

Duties of attorney of official liquidator.

90. The attorney, or, in Courts other than the High Court, the vakeel, of the official liquidator shall conduct all such proceedings, as are ordinarily conducted by attorneys of the High Court, or by vakeels in such other Courts; and where the attendance of his attorney or vakeel is required on any proceeding in Court or Chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his attorney or vakeel, or the Court shall direct him to attend.

Attorney's fees.

91. Attorneys and vakeels shall be entitled to charge and be allowed the fees set forth and referred to in the table of fees in Chapter XXXVI, so far as they are applicable, unless the Court shall otherwise specially direct.

Taxation of costs.

92. Where an order is made by the High Court in Court or in Chambers for payment of any costs, the other shall direct the taxation thereof by the Taxing Officer, except in cases where a gross sum in lieu of taxed costs is fixed by the order.

General power of Court.

93. The power of the Court or a Judge to enlarge or abridge the time for doing any act, or taking any proceeding to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by this Chapter.

Accounts, etc., to be filed in Registrar's office.

94. All accounts, lists, notices, and other documents directed by these rules to be filed in Court shall be filed in the office of the Registrar.

Notice of appointment of Liquidator.

94A. The notice of appointment by a liquidator in a voluntary winding up to be filed with the Registrar of Joint Stock Companies under section 208(1) of the Act shall be in Form No. 68.

Statements to be filed by Liquidator.

94B. The statements with respect to the proceedings in and position of the liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be filed with the Registrar of Joint Stock Companies twice in every year as follows:—

(1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding up, shall be filed within 30 days from the expiration of such twelve months, or within such extended period

as the Judge may sanction; and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is filed.

(2) Form No. 69 with such variations as the circumstances may require, shall be used and the directions specified in the Form shall, unless the Judge otherwise directs, be observed in reference to every statement.

(3) Every statement shall be filed in duplicate and shall be verified by an affidavit in Form No 70 with such variations as the circumstances may require.

94C. The statement to be laid before the meeting summoned under section 216(2) of the Act shall in the case of the first statement be a statement similar in all respects to the first statement filed with the Registrar of Joint Stock Companies under Rule 94B; and subsequent statements shall be similar in form to the first statement but shall commence at the date when the last previous statement terminated and be brought down to the end of twelve months from such date. **Statement to be laid before meeting by Liquidator.**

95. In cases not provided for by this Chapter or by rules of procedure laid down in the Act, the practice and procedure of the High Court of Justice in England in matters relating to companies shall be followed so far as they are applicable and not inconsistent with this Chapter and the Act. **General practice to apply.**

96. The forms to which reference is made in and to be used under this Chapter are those in Appendix K(*a*). **Forms.**

(*a*) Appendix K is the Appendix so referred to in the Rules of the High Court, Original Side

APPENDIX K TO THE RULES OF THE HIGH COURT, ORIGINAL SIDE.

FORM No. 1.

(Rule 6.)

(*For general heading, see rule* 1.)

Order.

Upon the application of the petitioner by summons, dated and upon hearing the attorneys for the petitioners, and on reading the petition on the day of presented to the High Court of Judicature at Fort William in Bengal. It is ordered, that an inquiry be made as to what are the debts, claims, and liabilities of or affecting the said company on the day of 19 , and that notice of the presentation of the said petition be inserted in ( ) on the day of and ( ) and that a list of the persons who are creditors of the company on the said day of together with their addresses and the amounts due to them respectively and the affidavit verifying the same be filed in the office of the Registrar of the said High Court on or before the day of And it is further ordered that any creditor whose name does not appear in such list or who claims to be a creditor for a larger amount than that for which he is entered in such list shall on or before the day of send in his name and address and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company And it is further ordered that notice of the day so fixed as last aforementioned shall be given in writing by registered post to every creditor whose name appears in such list and such notice shall be inserted in on the day of and in on the day of

And it is further ordered that the attorney of the company and some competent officer or officers of the company do on or before the day of make and file an affidavit stating the result of such notices and verifying the names and addresses of the persons (if any) who shall have

sent in particulars of their debts and claims in pursuance of such notices respectively and the amounts of such debts or claims distinguishing which (if any) of such debts or claims are wholly or as to any and what part thereof admitted by the company and which (if any) of such debts and claims are wholly or as to any and what part thereof disputed by the company.

FORM NO. 2.

(Rule 7.)

(*For general heading, see rule* 1.)

Notice of advertisement of petition.

Notice is hereby given that a petition for confirming a resolution reducing the share capital of the above company from rupees to rupees was on the day of presented to the High Court of Judicature at Fort William in Bengal and is now pending; and that the list of creditors of the company is to be made out as for the day of 19 .

C. and D., attorneys to the company.

FORM NO. 3.

(Rule 9.)

(*For general heading, see rule* 1.)

I, A. B., of etc., make oath or solemn affirmation and say as follows :—

Affidavit verifying list of creditors.

1. The paper-writing, hereto annexed and marked with the letter A, contains a list of the creditors of and persons having claims upon the said company on the day of 19 (the date fixed by order in this matter dated) together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other

than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company.

(*Usual Jurat.*)

List of creditors referred to in the last form.

Exhibit A referred to in the annexed affidavit of sworn [*or solemnly affirmed*] this day of 19 . Before me

Commissioner.

In the matter, etc.

Names, addresses and descriptions of the creditors.	Nature of debt or claim.	Amount of debt or claim.

FORM No. 4.

(Rule 11.)

(*For general heading, see rule* 1.)

To

Notice to creditor.

You are requested to take notice that a petition has been presented to the Court of , to confirm a special resolution of the above company for reducing its share capital from rupees to rupees and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor (*here state the amount of the debt or nature of the claim*).

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above you must on or before the day of send the particulars of your claim and the name and address of your attorney (if any) to the undersigned at . In default of your so doing the above entry in the list of creditors will, in all proceedings under the above application to reduce the share capital of the company, be treated as correct.

Dated the day of 19 .

A. B.,
Attorney for the said company.

FORM No. 5.

(Rule 12.)

(*For general heading, see rule* 1.)

Notice of advertisement of list of creditors.

Notice is hereby given that a petition has been presented to the High Court of Judicature at Fort William in Bengal for confirming a resolution of the above company for reducing its share capital from rupees to rupees . A list of the persons admitted to have been creditors of the company on the day of 19 may be inspected at the offices of the company at or at the office of at any time during usual business hours on payment of the charge of Re. 1.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his attorneys (if any) to the undersigned at or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of 19

A. B.,
Attorney for the said company.

FORM NO. 6.

(Rule 13.)

(*For general heading, see rule* 1.)

Affidavit of list of persons who have sent in claims.

We, C. D. of etc. (the secretary or agent of the said company), E. F. of etc. (the attorney of the said company), and A. B. of etc. (the managing director of the said company), severally make oath or solemn affirmation and say as follows :—

I, the said C. T., for myself, say as follows :—

1. I did, on the day of 19 in the manner hereinafter mentioned serve a true copy of the notice, hereto annexed and marked B, upon each of the respective persons whose names and addresses and descriptions appear in the first column of the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

2. I served the said notice upon the persons respectively mentioned in the said list (being the last known addresses or places of abode of such persons respectively) by sending on the day of by registered post copies of such notice to the respective addresses appearing in such list. And I, the said E. F., for myself, say as follows :—

3. A true copy of the notice, hereto annexed and marked C, has appeared in the of the 19 , the of the day of 19 , etc.

4. I have, in the paper-writing hereto annexed and marked D, set forth a list of all claims the particulars of which have been sent in to me pursuant to the said notice B by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

5. I have, in the paper-writing hereto annexed and marked E, set forth a list of all claims the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of

19 , not appearing on the said list of creditors, marked A, and who claimed to be entered thereon.

And we, C. D. and A. B., for our ourselves say as follows :—

6. We have, in the first part of the said paper-writing, hereto annexed and marked D, and also in the first part of the said paper-writing hereto annexed and marked E, respectively, set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part. and how much is admitted to be due in respect of such of the same debts and claims, respectively, as are not wholly admitted.

7. We have, in the second part of each of the said paper-writings, marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct.

(*Usual Jurat.*)

Exhibit D referred to in the annexed affidavit of C. D., E. F., and A. B. sworn [or affirmed] this day of 19 , before me.

Commissioner.

D

In the matter, etc.

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said company for *larger amounts* than are stated in list of creditors made out by the company.

First part.

Debts and claims wholly or partly admitted by the company.

Names, addresses and descriptions of creditors.	Particulars of debt or claim.	Amount claimed.	Amount admitted by the company to be owing to creditors.	Debts proposed to be set apart and appropriated in full although disputed.

Second part.

Debts and claims wholly disputed by the company.

Names, addresses and descriptions of claimants.	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E referred to in the annexed affidavit of C. D., E. F., and A. B. respectively sworn [or affirmed] this day of 19 , before me.

Commissioner.

E

In the matter, etc.

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the company and to be entered on the list of the creditors made out by the company

FIRST PART.

(Same as in Exhibit D.)

SECOND PART.

(Same as in Exhibit D.)

NOTE.—The names are to be inserted alphabetically

FORM NO. 7.

(Rule 14.)

(*For general heading, see rule* 1.)

To

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit, and giving notice thereof to , the attorney of the company, on or before the day of next; and you are to attend in person or by your attorney at the Chambers of the Honourable at the High Court on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

Notice to creditors to come in and prove debt.

In default of your complying with the above directions you will (be precluded from objecting to the proposed reduction of the capital of the company), (or in all proceedings relative to the proposed reduction of the share capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated this day of 19 .

A. B.,

Attorney for the said company.

FORM No. 8.

(Rule 18.)

(*For general heading, see rule* 1.)

Notice of advertisement of day for hearing petition.

Notice is hereby given that a petition presented to the Honourable on the day of , for confirming a resolution reducing the share capital of the above company from Rs. to Rs , is directed to be heard before the Honourable on the day of 19

A. B.,

Attorneys for the company.

FORM No. 9.

(Rule 24.)

(*For general heading, see rule* 1.)

Advertisement of petition to wind up.

Notice is hereby given that a petition for the winding up of the abovenamed company by the (or subject to the supervision of the) High Court of Judicature at Fort William in Bengal (or District Court of) was on the day of 19 presented to by the said company (*or* C. D. of , a creditor or contributory of the said company *or as the case may be*). And that the said petition is directed to be heard before on the day of 19 ; and any creditor or contributory of the said company desirous to oppose the making of an order for the winding up of the said company under the above Act should appear at the time of hearing by himself or his counsel for that purpose; and a

copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

A. B.,

Attorneys for the petitioners.

FORM No. 10.

(Rule 26.)

(*For general heading, see rule* 1.)

I, A. B., of etc., make oath (or do solemnly affirm) and say that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true. **Affidavit verifying petition.**

(*Usual Jurat.*)

FORM No. 11.

(Rule 29.)

(*For general heading, see rule* 1.)

Upon the petition of the abovenamed company, or A. B. of etc., a creditor (or contributory of the abovenamed company) filed on the day of 19 presented unto the said Court, and upon hearing Counsel for the petitioner, and for and upon reading the said petition, an affidavit of the said petitioner filed, etc., verifying the said petition, an affidavit of S. M. filed the day of 19 the *Gazette of India* of the day the *Calcutta Gazette* of the day of (enter any other paper) each containing an advertisement of the said petition (enter any other evidence) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1913. **Order for winding up by the Court.**

Form No. 12.

(Rule 29.)

(*For general heading, see rule* 1.)

Order for winding up subject to supervision.

Under the petition, etc., this Court doth order that the voluntary winding up of the said company be continued, but subject to the supervision of the Court; and any of the proceedings under the said voluntary winding up may be adopted as this Court shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to a Judge of this Court at Chambers as there may be occasion.

Form No. 13.

(Rule 29.)

(*For general heading, see rule* 1.)

Advertisement of order to wind up.

By an order made by the High Court of Judicature at Fort William in Bengal (or District Court of) in the above matter dated the day of 19 , on the petition of the abovenamed company (or A. B. of): it was ordered that, etc., *as in order.*

C. and D.,

Attorneys for the said petitioner.

Form No. 14

(Rule 32.)

(*For general heading, see rule* 1.)

Advertisement of time and place fixed for the appointment of official liquidator.

Notice is hereby given that the Honourable Mr. Justice (or the Judge of the District Court of) has fixed the day of 19 , at o'clock in the noon at his Chambers in the Court-house of the High Court at Fort William in Bengal (or at the District Court-house at) as the time and place for the appointment of an official liquidator of the abovenamed company.

G. H.,

Registrar,

(*or as the case may be*).

Form No. 15.

(Rule 32.)

(For general heading, see rule 1.)

We, the undersigned contributories of the abovenamed company for the number of shares placed opposite our respective names, hereby propose Mr. R. P. H. of etc., public accountant, to be the official liquidator of the said company and H. N. of etc., and J. P. of etc., to be his sureties.

Proposals for appointment of official liquidator and sureties where Form No. 14 has been issued.

Name.	Address	Number of shares held.

Form No. 16.(a)

(Rule 33.)

(For general heading, see rule 1.)

Security Bond by Official Liquidator and Surety other than a Guarantee Society

Know all men by these presents that $\frac{I}{we}$ (Name of the Official Liquidator or Liquidators his or their description and address) and $\frac{I}{we}$ (Name of the Surety or Sureties his or their description and address) are jointly and severally held and firmly bound unto (Name of the Registrar, Original Side) Esquire, Registrar of the High Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction his successor or successors in office and assigns in the sum of Rupees
Of lawful money of British India to be paid to the said (Name of the Registrar, Original Side) Esquire, his successor or successors in office or assigns as the case may be, for which payment well and truly to be made we the said (Name of the Official Liquidator or Liquidators and Surety or Sureties) for ourselves our heirs executors administrators and representatives and every of them do hereby bind and oblige ourselves for the whole firmly by these presents, *Signed, sealed and delivered* by the said (Name of the Official Liquidator or Liquidators and Surety or Sureties) *Dated* this
day of one thousand nine hundred and .

(a) This and Form 16A were published in the *Gazette of India*, April 1, 1916. Pt. II, pp 620-621

WHEREAS by an order dated the day of one thousand nine hundred and made by the said High Court in the matter of the Indian Company's Act VII of 1913 and in the matter of (Name of the Company) the said (Name of the Official Liquidator or Liquidators) was/were appointed the Official Liquidator/Liquidators of the said Company and he/they was/were hereby directed to give security for Rupees to be approved of by the said Registrar AND WHEREAS the said (Name of the Official Liquidator or Liquidators) has/have proposed and the said Registrar has accepted the said (Name of the Surety or Sureties) as Surety/Sureties for the said (Name of the Official Liquidator or Liquidators).

NOW THE CONDITION of the above Written Bond or Obligation is such that if the said (Name of the Official Liquidator or Liquidators) or his/their executors or administrators or some or one of them do and shall duly account for all and every the sum and sums of money or other property which the said (Name of the Official Liquidator or Liquidators) has/have received and shall receive or has/have or shall become or be liable to pay or account for as such Official Liquidator/Liquidators as aforesaid and do and shall pay or deliver the same as the Court or a Judge hath directed or shall hereafter direct and do and shall from time to time and at all times hereafter so long as he/they shall continue as such Official Liquidator/Liquidators duly and faithfully in all respects discharge the duties and obligations which shall devolve upon him/them as Official Liquidator/Liquidators as aforesaid and file and pass his/their accounts before a Judge of the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other the directions contained in the said order and all other orders which may hereafter be made by the said High Court in the premises: then the above Written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed sealed and delivered at
Calcutta in the presence of

FORM NO. 16-A.

(Rule 33.)

(For general heading, see rule 1.)

KNOW ALL MEN BY THESE PRESENTS that $\frac{I}{we}$ (Name of the Official Liquidator or Liquidators his or their description and address) and we (Name of the Guarantee Society) carrying on business in Calcutta at (place of business) through (Name of the Guarantee Society's agent) hereinafter called the Society, are jointly and severally held and firmly bound unto (Name of the Registrar, Original Side) Esquire, Registrar of the High Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction his successor or successors in office and assigns in the sum of Rupees of lawful money of British India to be paid to the said (Name of the Registrar, Original Side) Esquire his successor or successors in office or assigns as the case may be, for which payment well and truly to be made $\frac{I}{we}$ the said (Name of the Official Liquidator or Liquidators) for $\frac{myself}{ourselves}$ $\frac{my}{our}$ heirs executors administrators and representatives and every of them and we, the Society, for ourselves and our successors, do hereby bind and oblige ourselves for the whole firmly by these presents, and we the Society do hereby submit ourselves to the Jurisdiction of the said High Court and appoint (Place of business of the Agents) aforesaid as the address for service of all writs proceedings or notices that may be issued taken or given with reference to the conditions of this bond or with respect to the liability of the said (Name of the Official Liquidator or Liquidators) thereunder *Signed sealed and delivered* by the said (Name of the Official Liquidator or Liquidators) and sealed with the seal of the said Society. *Dated* this day of one thousand nine hundred and

Security Bond by Official Liquidator and a Guarantee Society.

WHEREAS by an order dated the day of . One thousand nine hundred and made by the said High Court in the Matter of the Indian Company's Act VII of 1913 and in the Matter of (Name of the Company) the said (Name of the Official Liquidator or Liquidators) $\frac{was}{were}$ appointed the Official $\frac{Liquidator}{Liquidators}$ of the said Company and $\frac{he}{they}$ thereby directed to give security for Rupees to be

approved of by the said Registrar *and whereas* the said (Name of the Official Liquidator or Liquidators) $\frac{\text{has}}{\text{have}}$ proposed and the said Registrar has under the Rules of the said High Court accepted the said Society as surety for the said (Name of the Official Liquidator or Liquidators).

Now THE CONDITION of the above Written Bond or Obligation is such that if the said (Name of the Official Liquidator or Liquidators) or $\frac{\text{his}}{\text{their}}$ executors or administrators or some or one or them do and shall duly account for all and every the sum and sums of money or other property which the said (Name of Official Liquidator or Liquidators) $\frac{\text{has}}{\text{have}}$ received and shall receive or $\frac{\text{has}}{\text{then}}$ or shall become or be held liable to pay or account for as such Official $\frac{\text{Liquidator}}{\text{Liquidators}}$ as aforesaid and do and shall pay or deliver the same as the Court or a Judge hath directed or shall hereafter direct, and shall give immediate notice to the Court if the said Society shall become Insolvent or go into Liquidation and do and shall, from time to time and at all times hereafter so long as $\frac{\text{he}}{\text{they}}$ shall continue as such Official $\frac{\text{Liquidator}}{\text{Liquidators}}$ duly and faithfully in all respects discharge the duties and obligations which shall devolve upon $\frac{\text{him}}{\text{them}}$ as Official $\frac{\text{Liquidator}}{\text{Liquidators}}$ as aforesaid and file and pass $\frac{\text{his}}{\text{their}}$ accounts before a Judge of the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other the directions contained in the said order and all other orders which may hereafter be made by the said High Court in the premises: then the above Written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed sealed and delivered by the said (Name of Official Liquidator or Liquidators) at Calcutta in the presence of

The seal of the Society was hereunto affixed in the presence of .

Signed for and on behalf of the Society.

FORM No 17.

(Rule 23.)

(*For general heading, see rule 1*)

We, W. B. of etc., and T. P. of etc, severally make oath (or solemnly affirm) and say as follows :- **Affidavit of sureties.**

1 I, the said W B for myself, say that I am worth the sum of rupees of lawful money of British India, over and above what is sufficient for the payment of all my just debts and liabilities

2. And I, the said T P for myself, say that I am worth the sum of rupees of etc (*as above*).

(*Usual Jurat.*)

FORM No. 18.

(Rule 34.)

(*For general heading, see rule 1*)

The day of 19 .

Upon the application, etc, and upon reading, etc. the Court doth hereby appoint R P. H. of etc., official liquidator of the abovenamed company (*If security has not been given add* and it is ordered that the said R. P H do on or before the day of next give security to be approved of by the Court) And it is ordered that the said R P H on the day of and day of 19 and the same days in each succeeding year file his accounts in the office of the Registrar of the said Court (*or in the case of a District Court* in the District Court at) and it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of Bengal (or the branch nearest to the Court in which the matter is pending, or in the case of a District Court into the District Court at) to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof (*In case two or more official liquidators are appointed add* And the said Court doth declare that the following acts required or authorised by the above Act to be done by the official liquidators may be done by either (or any one, or two) of the official liquidators hereby appointed, that is to say (describe the acts), and all other acts so required or authorised to be done by both (or all) the official liquidators hereby appointed. **Order appointing an official liquidator.**

FORM No. 19.

(Rule 37.)

(*For general heading, see rule 1.*)

Advertisement of appointment of official liquidator.

The Honourable Mr. Justice (or the District Judge of) has, by an order dated the day of 19 , appointed R. P. H. of to be official liquidator of the abovenamed company.

Dated this day of 19 .

FORM No. 20.

(Rule 38.)

(*For general heading, see rule 1.*)

The day of 19 .

Order appointing a provisional official liquidator.

Upon the application, etc., and upon reading, etc., the Court doth hereby appoint R P. H of etc., provisionally, official liquidator of the abovenamed company. (*If security is dispensed with add*, without security ; *or if security is to be given add direction as to security account and payment into the Bank as in form No* 18) and the said Court doth hereby limit and restrict the powers of the said R P. H as such provisional official liquidator to the following acts, that is to say (*describe the acts which the provisional official liquidator is to be authorised to do*).

FORM No 21.

(Rule 44.)

(*For general heading, see rule 1.*)

Advertisement for creditors.

The creditors of the abovenamed company are required on or before the day of 19 to send their names and addresses and the particulars of their debts or claims, and the names and addresses of their attorneys (if any) to R. P. H. of , the official liquidator of the said company, and if so required by notice in writing from the official liquidator, are in person or by their attorneys to come in and prove their said debts or claims at such time as shall be specified in such notice, or in default thereof they

will be excluded from the benefit of any distribution made before such debts proved.

The day of 19 , at o'clock in the noon, at the said , is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 19 .

G. H.

FORM No. 22.

(Rule 46.)

(*For general heading, see rule 1.*)

Affidavit of official liquidator as to debts and claims.

I, K. P. H. of etc., the official liquidator of the above-named company, make oath (or solemnly affirm) and say as follows :-

1. I have, in the paper-writing hereto annexed and marked with the letter A, set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claim upon or claiming to be the creditors of the said company, pursuant to the advertisement issued in that behalf, dated the day of 19 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company ; and I have in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence, and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims, and I believe that such amounts, respectively, are justly due and proper to be allowed ; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (or solemnly affirmed), etc.

FORM NO. 23.

(Rule 46.)

A.

(*For genral heading, see rule 1.*)

Exhibit referred to in affidavit (No. 22).

Exhibit A referred to in the affidavit of R H. P., sworn (or solemnly affirmed) before me this day of 19

W B. etc

List of debts and claims of which the particulars have been sent in to the official liquidator

First part.

Debts and claims which ought to be allowed without further evidence

Serial No.	Names of creditors.	Addresses and descriptions.	Particulars of debts or claims	Amount claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed
				Rs As P	Rs. As P	

Second part.

Debts and claims which ought to be proved by the creditors

Serial No.	Number of creditors.	Address and description.	Particulars of debts or claims	Amount claimed
				Rs As P

FORM No. 24.

Rule 47.)

(*For general heading, see rule 1.*)

(Place and date)

SIR.

The debt claimed by you in this matter has been allowed by the Judge at the sum of Rs (*if part only allowed add*) if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, etc [*as in the next form*] **Notice to creditors of allowance of debt.**

I am, etc .
R P. H.,
Official Liquidator

To MR. P. R.

FORM No 25

(Rule 48.)

(*For general heading, see rule 1*)

(Place and date.)

SIR,

You are hereby required to come in and prove the debt claimed by you against the abovenamed company, by filing your affidavit, and giving notice thereof to me on or before the day of next, and you are to attend in person or by your attorney (or vakil) on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim. **Notice to creditors to come in and prove their debts.**

Dated this day of 19

R. P. H.,
Official Liquidator.

To MR. P. R.

FORM No. 26.

(Rule 48.)

(*For general heading, see rule 1.*)

I, S. T. of etc., make oath (or solemnly affirm) and say as follows :-

Affidavit of creditor in proof of debt.

1. The abovenamed company was on the day of 19 , the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of rupees for, etc (*Describe shortly the nature of the debt and exhibit any security for it, and in case of a trade debt exhibit vouchers, and verify the reasonableness of the charges, as in proving a debt in a suit*).

2. I have not, nor hath nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of rupees or any part thereof, or any security or satisfaction for the same or any part thereof (*If any security add*) except the said (*describe the security*) hereinbefore mentioned or referred to.

Sworn (or solemnly affirmed, etc.)

FORM No. 27.

(Rule 52.)

(*For general heading, see rule 1.*)

Settlement by the Judge of debts and claims.

The debts and claims which have been allowed are set forth in the first schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to Rs.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry, down to (the present) date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been brought in by the persons therein named and have been disallowed.

(*The first schedule above referred to.*)

First part.

Debts and claims which carry interest.

Number.	Names of creditors	Addresses and descriptions.	Particulars of debts.	Total amount.
1	J. L	Of (address)	On bills of exchange dated, etc.	Rs. As P.
		Principal	Rs.	
		Interest at per cent. per annum from to the date of this certificate	Rs	
		Cost of proof.		

Second part.

Debts and claims which do not carry interest.

Number	Names of creditors	Addresses and descriptions	Particulars of debts.	Interest on principal.	Total due.
			Rs As. P.	Rs. As P.	Rs. As. P.
			Goods sold—		
40	W. R.	Of (address)	50 0 0		
		Principal	2 0 0		
		Costs of proof	Total Rs	2 0 0	
			Add Total		54 0 0
			First part		
			Total, first and second parts.		

The second schedule above referred to.

No.	Names of creditors	Addresses and descriptions	Particulars of claims	Amount claimed

Dated this day of 19

(*Signature of the Judge or District Judge.*)

FORM No 28

(Rule 52.)

(*For general heading, see rule 1.*)

SIR,

Notice to creditor to attend to receive debt.

Upon application at my office No Street, Calcutta, on or after the instant, between the hours of ten and four o'clock you may receive a cheque for the amount of your debt allowed in this matter as under :-

	Rs
Principal .	
Interest .	
Costs of proof .	
TOTAL	

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form

The bills or securities (if any) held by you must be produced at the time of such application

Dated this day of 19 .

R. P. H.,
Official Liquidator.

SIR,

Please to deliver to W. R. the cheque for Rs referred to in the above letter as payable to me.

S. T.,
Creditor.

To Mr R. P. H.,
Official Liquidator of the Company.

FORM No. 29.

(Rule 53.)

(*For general heading, see rule 1.*)

I, R P. H of etc., the Official Liquidator of the above-named company, make oath and say (or solemnly affirm) as follows :— **Affidavit in support of list of contributories**

1 The paper-writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said Company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each , and such is, to the best of my knolwedge, information and belief, a true and accurate list of the contributories of the said Company so far as I have been able to make out and ascertain the same.

2 I have, in the first part of the said list marked A, distinguished the persons who are contributories in their own right

3. I have, in the second part of the said list marked A, distinguished the persons who are contributories as being representatives of, or being liable for the debts of, others.

Sworn (or solemnly affirmed), etc.

FORM No. 30.

(Rule 53.)

A.

Exhibit A referred to in the annexed affidavit of R. P. H. sworn [or solemnly affirmed] before me this day of 19 **List of contributories referred to in Form No. 29.**

W. B.,
etc.

First part.

Contributories in their own right.

Serial No.	Name	Address.	Description	In what character included	Number of shares (or extent of interest)

Second part.

Contributories as being representative of, or liable for the debts of, others.

Serial No.	Name.	Address	Description	In what character included	Number of shares (or extent of interest)

FORM No. 31.

(Rule 53.)

(*For general heading, see rule 1.*)

Order on application to vary list.

Upon the application of W. N. to review the list of contributories of the said company in respect of the inclusion of the said W. N. therein and that his name may be excluded therefrom and upon hearing Advocates, etc., and upon reading, etc. It is ordered that the name of the said W. N. be excluded from the said list of contributories for the Court doth not think fit to make any order on the said application except that the said W N. do pay to R. P. H., the official liquidator of the said company his costs of this application to be taxed by the Taxing Officer in case the parties differ (or in the case of a District Court the sum of Rs.) for his costs of this application

FORM No. 32.

(Rule 54.)

(*For general heading, see rule 1*)

Notice to contributories of appointment to settle list of contributories.

The Honourable Mr. Justice (*or as the case may be*) has appointed the day of 19 , at of the o'clock in the noon at , to settle the list of the contributories of the above-named Company, made out and filed in Court by the official liquidator of the said Company, and you are included in such list in the character, and for the number of shares or extent of interest stated below, and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the said Judge, including you therein.

Dated this day of 19 .

R. P. H.,

Official Liquidator.

To Mr. A. B., and to Mr. C. D. his attorney.

Number on list.	Name	Address	Description	In what character included	Number of shares (or extent of interest)

FORM No. 33

(Rule 54.)

(*For general heading, see rule 1.*)

Affidavit: service of notice

I, W S, of etc, clerk to Messrs C and D of etc., the attorneys of the Official Liquidator of the abovenamed Company, make oath (or solemnly affirm) and say as follows:

1 The first six columns of the schedule hereto annexed, and marked with the letter A, contain a true copy of the list of contributories of the said company, made out and filed in Court by the said Official Liquidator, on the day of 19 , and now on the file of proceedings of the said Company, as I know from having, on the day of 19 , examined and compared the said schedule with the said list, and I have in the seventh column of the said schedule, marked A, set forth the names and addresses of the attorneys who have entered appearances for any of the contributories named in the said list.

2 I did, on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice hereto annexed and marked B, upon each of the said respective persons whose names, addresses, and descriptions appear in the second, third and fourth columns of the said schedule, marked A, except that in the tabular form at the foot of such copies respectively, I inserted the number of list, name, address, description, in what character included, and number of shares or extent of interest of the person on whom

such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule, marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their attorneys, according to their respective names and addresses appearing in the said schedule and marked A. and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving house No. , Street, in Calcutta (*or as the case may be*) between the hours of and o'clock in the noon of the said day of 19

Sworn (or solemnly affirmed), etc.

FORM No. 34.

(Rule 54.)

A.

(*For general heading, see rule 1.*)

Schedule A referred to in the annexed affidavit of W. S. sworn (or solemnly affirmed) before me this day of 19 .

The schedule referred to in Form No. 33

W. B.,
etc.

No. on list	Name	Address.	Description	In what character included.	Number of shares (or extent of interest)	Names and addresses of attorneys who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S. to which this schedule is an exhibit
1	2	3	4	5	6	7

FORM No. 35

(Rule 45)

(*For general heading, see rule 1.*)

Supplemental list of contributories and affidavit in support

I, R. P H. of etc., the official liquidator of the abovenamed company make oath (or solemnly affirm) and say as follows .—

1. Since filing in Court the list of the contributories in this matter on the day of 19 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories hereto annexed and marked with the letter B, are or have been holders of shares (or members) of the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list, marked B, contains the names of such persons, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each ; and such list is, to the best of my knowledge, information and belief, true and accurate

3. I have, in the first part of the said list, marked B, distinguished such of the said persons as are contributories in their own right

4. I have, in the second part of the said list, marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable for the debts of, others.

Sworn (or solemnly affirmed), etc.

FORM No 36.

(Rule 54)

B.

(*For general heading, see rule 1*)

Supplemental list of contributories referred to in Form No 35.

Exhibit B referred to in the annexed affidavit of R. P. H. sworn (or solemn affirmation made) before me, this day of 19

W. B.,

etc.

NOTE —The supplemental list is to be made out in the same form as the original list Form No 30

Form No. 37.

(Rule 55.)

(*For general heading, see rule 1.*)

The result of the settlement of the list of the contributories of the abovenamed company, made out and filed in Court by the official liquidator of the said company, on the day of 19 , pursuant to the above Act and the General Order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows :— **Settlement by the Judge of the list of contributories**

1. The several persons, whose names are set forth in the second column of the first schedule hereto, have been included in the said list of contributories as contributories of the said company in respect of the number of shares (or extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the first list as are contributories in their own right I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of, others.

2 The several persons whose names are set forth in the second column of the said schedule hereto have been excluded from the said list of contributories.

3 I have, in the seventh column of the said first and second schedules, set forth opposite the names of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories

The first schedule above referred to.

First Part.

Contributories in their own right.

Serial No in list.	Name	Address.	Description	In what character included.	Number of shares or extent of interest	Date when included in the list.

Second Part.

Contributories as being representatives of, or liable for the debts of, others.

Serial No. in list	Name	Address.	Description	In what character included	Number of shares or extent of interest.	Date when included in the list

The second schedule above referred to.

Serial No. in list.	Name	Address	Description	In what character proposed to be included	Number of shares or extent of interest	Date when excluded from the list

Dated this day of 19 .

(*Signature of the Judge or District Judge.*)

FORM No. 38.

(Rules 56, 61 and 66.)

(For general heading, see rule 1.)

To the Secretary and Treasurer of the Bank of Bengal (or the Agent of the branch of the Bank of Bengal at).

SIR,

An order, dated the day of 19 , having been made in the above matter by the High Court of Judicature at Fort William in Bengal (or District Court of) for winding up the abovenamed company by the Court, under the provisions of the said Act, and R. P. H., of having by order dated the day of 19 , been appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The account of the official liquidator of the company" in your books pursuant to the said Act All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by the Registrar of the said Court , whose signature is also attached hereto **Direction to open account at the Bank of Bengal.**

I am, Sir,
Your most obedient servant,
G. H.

Signature,
R. P. H.,
Official Liquidator.
G W.

In the case of winding up proceedings being carried on in a District Court, the liquidator of the company should present a similar application to the Judge as the above, *mutatis mutandis* for leave to open such an account in the District Court.

FORM No. 39.

(Rule 57.)

(For general heading, see rule 1.)

I, R. P H. of etc., the official liquidator of the abovenamed company make oath (or solemnly affirm) and say as follows :— **Affidavit of official liquidator in support of proposal for call.**

1. I have in a schedule hereto annexed and marked with the letter A, set forth a statement showing the amount due in

respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of an incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of Rs or thereabouts.

2 I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of Rs. and no more There are no other assets belonging to the said company, except the amounts due from certain of the said contributories of the said company, and to the best of my information and belief it will be impossible to realize in respect of the said amounts more than the sum of Rs or thereabouts

3 It appears by the certificate of the Honourable Mr Justice (*or as the case may be*) dated the day of 19 , that persons have been settled on the list of contributories of the said company in respect of the total number of shares

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges and expenses of and incidental to the winding up the affairs thereof, I believe the sum of Rs will be required, in addition to the amount of the assets of the said company mentioned in schedule A and the said sum of Rs

5. In order to provide the said sum of Rs is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required, as before mentioned, it is necessary that a call of Rs. per share should be made

Sworn (or solemnly affirmed), etc

FORM NO. 40

(Rule 57)

(*For general heading, see rule 1.*)

Summons for intended call.

Let all parties concerned attend at on day the day of 19 at of o'clock in the noon, on the hearing of an application on the part of the official liquidator of the abovenamed

company, that a call to the amount of Rs. per share may be made on all the contributories (*or if upon any particular class specify the same*) of the said company.

This summons was taken out by A B of attorney for the said official liquidator.

To Mr. C D of etc., a contributory of the said company proposed to be included in the said call.

Form No. 41.

(Rule 57.)

(*For general heading, see rule 1.*)

By direction of the Honourable Mr. Justice notice is hereby given that the said Judge has appointed the day of 19 , at o'clock of the noon, at to make a call on all the contributories of the said company, or *as the case may be*, and that the said call shall be for Rs per share. All persons interested are entitled to attend at such day, hour, and place to offer objections to such call

Advertisement of intended call

Dated this day of 19 .

Form No. 42.

(Rule 58.)

(*For general heading, see rule 1.*)

Upon the application of the official liquidator of the abovenamed company and upon reading two orders dated the day of 19 and the day of 19 the certificate of the dated the day of 19 an affidavit of the said official liquidator filed 19 and the exhibit marked A therein referred to and an affidavit of filed 19 It is ordered that a call of Rs per share be made on all the contributories of the said company (or *as the case may be*). And it is ordered that each such contributory do, on or before the day of 19 pay into the Bank of Bengal (or the Branch of the Bank of Bengal or in the case of District Court into the District Court at) to the account of the official liquidator of the company the amount which will be due from him or her in respect of such call

General order for a call

FORM No. 43.

(Rule 58.)

(*For general heading, see rule* 1.)

Notice to be served with the general order for a call.

The amount due from you, C. D., in respect of the call made by the above (or within) order is the sum of Rs. , which sum is to be paid by you into the Bank of Bengal (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at) to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent but this notice and copy of order must be produced at the Bank or to the Court upon such payment, and the Secretary and Treasurer [or the Agent] of the Bank or the Nazir [or other proper officer] of the said Court will, upon receiving the same, deliver to you a certificate of the payment in numbered , signed by the said Secretary and Treasurer [or Agent] or Judge. In order to prevent proceedings being taken against you for non-payment you must immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me, as the official liquidator of the said company, at my office, No. Street, in Calcutta (or as the case may be).

Dated this day of 19 .

R. P. H.,
Official Liquidator.

To Mr. A. B.

FORM No. 44.

(Rule 59.)

(*For general heading, see rule* 1.)

Affidavit in support of application for order for payment of call due from contributory.

I, R. P. H. of etc., the official liquidator of the above-named company, make oath (or solemnly affirm) and say as follows :—

1. None of the contributories of the said company whose names are set forth in the schedule hereto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them

respectively in respect of the calls of Rs.   per share, in pursuance of the order of the Judge in that behalf. Dated the   day of   19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call

Sworn (or solemnly affirmed), etc.

The schedule above referred to.

Number of list	Name.	Address	Description.	In what character included	Amount due.

NOTE.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos. 44 and 45) will be required.

FORM NO 45.

(Rule 59.)

(*For general heading, see rule* 1)

Upon the application of the official liquidator of the abovenamed company, and upon reading the order dated the   day of   19   an affidavit of   filed the   day of   19   and an affidavit of the said official liquidator, filed the   day of   19   it is ordered that C. D. of etc. (or E. F. of etc., the legal personal representative of L. M. late of etc., deceased) one of the contributories of the said company (or *if against several contributories* the several persons named in the second column of the schedule to this order being respectively contributories of the said company) do on or before the   day of   or within four days after service of this order

Order for payment of call due from contributory.

pay into the Bank of Bengal (or the Branch of the Bank of Bengal or in the case of a District Court into the District Court at) to the account of the official liquidator of the company (or to A. B the official liquidator of the said company at his office No. Street in the) the sum of Rs. (*If against legal personal representative, add* out of the assets of the said L M deceased in his hands as such legal personal representative as aforesaid to be administered in a due course of administration if the said E. F has in his hands so much to be administered or *if against several contributories* the several sums of money set opposite to their respective names in the sixth column of the schedule hereto) such sum (or sums) being the amount (or amounts) due from the said C D (or L M) or the said several persons respectively in respect of the call of Rs per share made by the said order dated the day of 19 .

The schedule referred to in the foregoing order

Number on list	Name	Address	Description	In what character included	Amount due

FORM No. 46

(Rule 59.)

(*For general heading, see rule 1.*)

Affidavit of service of order for payment of call.

I, J B of etc , make oath (or solemnly affirm) and say as follows .

1. I did, on the day of 19 , personally serve G F . of in the of , etc , with an order made in this matter by . dated the day of 19 , and which is hereto annexed and marked A, by delivering to and leaving with the said G. F. at , in the , a true copy of the said order together with a translation thereof in the language, and at the same time producing and showing unto him, the said G. F. the said original order duly entered

Sworn (or solemnly affirmed) etc.

FORM No. 47.

(Rule 63.)

You can make the payment directed by the within (or above) order to the Bank of Bengal (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at ,) in person, etc (*as in the form No* 37)

Notice to be endorsed on or served with every order directing payment of money into the Bank of Bengal or into Court

R. P H,
Official Liquidator.

FORM No 48

(Rule 63.)

No. day of 19

I hereby certify that C D of etc has this day paid into the Bank of Bengal [or into Court] the sum of , to be placed to the credit of the official liquidator of the company, pursuant to an order dated the day of 19

Certificate of payment of money into the Bank of Bengal or into Court.

For the Bank of Bengal, Rs

H M,
Secretary and Treasurer,
or
Nazir, District Court.
(*As the case may be*)

FORM No. 49.

(Rule 64.)

(*For general heading, see rule 1.*)

I, R P H of etc, the official liquidator of the above-named company, make oath and say or solemnly affirm as follows -

Affidavit of non-payment of money directed to be paid into the Bank of Bengal or into Court.

(1) G. F, the person named in an order made in this matter by the Honourable Mr Justice (*or as the case may be*), dated the day of 19 , has not paid into the Bank of Bengal (*or in the case of a District Court* into the District Court at) to the account of the official liquidator of the company, the whole or any part of the sum of Rs. as by the said order directed

Or, (in case of several parties) :—

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have, respectively, been duly served with orders made in this matter by the Honourable Mr. Justice (*or as the case may be*) of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of Bengal (*or in the case of a District Court* into the District Court at) to the account of the official liquidator or the company, the whole or any part of the several sums of money set opposite to their respective names in the schedule hereunder written as by the said order, respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained by inquiry at the said Bank (or at the said Court) that such payment (or payments) has (or have) not been made, and seen the certificate of payment in, numbered (or several certificates of payment in, the numbers whereof, respectively, are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates furnished by me to the Secretary and Treasurer of the said Bank (*or* Nazir of the said District Court at) for delivery to the said G. F. (*or* several persons, respectively) upon such payment (or payments) being made still in the hands of the Secretary and Treasurer of the said Bank (or Nazir of the said District Court). No notice (or notices) of such payment (or payments) having been made has (or have) been given to me by the said G. F. (or several persons, respectively)

(*Usual Jurat.*)

The schedule above referred to.

Name.	Address.	Description.	Amount.	Date of balance order.	Number of certificate.

FORM No. 50.

(Rule 67.)

(*For general heading, see rule* 1.)

To

THE SECRETARY AND TREASURER OF
THE BANK OF BENGAL.

SIR,

It appearing that the sum of Rs. cash is standing to the credit of the account of the official liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. , part thereof, in the purchase of per cent. Government Promissory Notes in the name as such official liquidator and to deposit such Government Promissory Notes in the Bank of Bengal (or the branch thereof or in the case of a District Court into the District Court at ,) in the name and on behalf of the official liquidator The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by a Judge of the High Court of Judicature at Fort William in Bengal [or by the Registrar of the High Court etc., under the orders of the Judge] (or by the Judge of the District Court of or under an order to be made by the said Judge).

Request to invest cash in Government Promissory Notes.

Dated this day of 19 .

I am, Sir,
Your most obedient servant,
R. P. H.,
Official Liquidator.

G. H.,
(*Countersigned.*)

FORM No. 51.

(Rule 67.)

(*For general heading, see rule* 1.)

To

THE JUDGE OF THE DISTRICT COURT AT

SIR,

Request to the Court to sanction the investment of cash in Government Promissory Notes.

It appearing that the sum of Rs. cash is standing in the said Court to the credit of the account of myself the official liquidator of the abovenamed company you are hereby requested to authorise me to invest the sum of Rs part thereof in the purchase of per cent Government Promissory Notes in my name as such official liquidator and to deposit such Government notes in the said Court in my name and on my behalf as such official liquidator. The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company and countersigned by the Judge of your said Court

Dated the day of 19 .

I am Sir,
Your obedient servant,
R P H,
Official Liquidator

FORM No 52.

(Rule 69.)

(*For general heading, see rule* 1.)

Notice (or advertisement) of meeting of creditors or contributories.

Notice is hereby given that the High Court of Judicature at Fort William in Bengal (or the District Court of) has directed a meeting of the creditors (or contributories) of the abovenamed company to be summoned, pursuant to the above Act, for the purpose of ascertaining their wishes as to (*state the object for which meeting called, unless notice is by advertisement, in which case say*. certain matters relating to the winding up of the said company) and that such meeting

will be held on day the day of 19 at o'clock in the noon, at in the , at which time and place all the creditors (or contributories) of the said company are requested to attend. (The said Court has appointed H. T., etc., to act as Chairman of such meeting.) Dated this day of 19 .

R. P. H.,
Official Liquidator.

FORM No. 53.

(Rules 69, 70 and 71.)

(*For general heading, see rule* 1.)

Chairman's report of result of meeting of creditors or contributories.

I, H. T., the person appointed by the High Court of Judicature at Fort William in Bengal (or District Court of) to act as Chairman of a meeting of the creditors (or contributories) of the abovenamed company, summoned by advertisement (or notice) dated the day of 19 , and held on the day of 19 at do hereby report to the said Court the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy by creditors, to whom debts against the said company have been allowed amounting in the whole to the value of Rs. (or by contributories holding in the whole shares in the said company and entitled respectively by the regulations of the company, to the number of votes hereinafter mentioned).

The question submitted to the said meeting was whether the creditors (or contributories) of the said company approved of the proposal of the official liquidator of the said company that, etc., (*as the case may be*), and wished that such proposal would be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into

effect, *or* the result of the voting upon such question was as follows :—

The undermentioned creditors (or contributories) voted in favour of the said proposal being adopted and carried into effect.

Name of creditor (or contributory).	Address.	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company.

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect.

Name of creditor (or contributory).	Address	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company

Dated this day of 19 .

(Signed) H. T.,

Chairman.

FORM No. 54.

(Rule 70.)

(*For general heading, see rule* 1.)

I, W. S. of , in the being a creditor (or contributory) of the abovenamed company, hereby appoint of , as my proxy to vote for me and on my behalf at the meeting of the creditors (or contributories) of the said company summoned by the direction of the to be held on the day of , and at any adjournment thereof

Appointment of proxy to vote at meeting of creditors or contributories.

As witness my hand this day of 19 , signed by the said W. S in the presence of

FORM No. 55.

(Rule 73.)

(*For general heading, see rule* 1.)

Mr. H. T. of etc., one of the creditors (or contributories) of the abovenamed company, is appointed to act as Chairman of a meeting of the creditors (or contributories) of the said company, summoned by direction of the said Judge, pursuant to the above Act, to be held on the day of 19 , at o'clock in the noon, at and to report the result of such meeting to the said Judge.

Memorandum of appointment of a person to act as Chairman at meeting of creditors or contributories.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors (or contributories) of the said company as to (*state the object for which meeting called*) and at such meeting the votes of the creditors (or contributories) may be given either personally or by proxy.

Dated this day of 19

FORM No 56.

(Rule 72.)

(*For general heading, see rule* 1.)

The Judge has sanctioned the acceptance of this bill of exchange by the official liquidator on behalf of the said company.

Memorandum of sanction of Judge to accepting bill of exchange.

FORM NO. 57.

(Rule 73.)

(*For general heading, see rule* 1.)

Memorandum of agreement of compromise with a contributory.

Memorandum of agreement entered into this day of 19 , between R. P. H. of etc., the official liquidator of the abovenamed company, of the one part, and S. B. of etc., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares in the said company ; and whereas by an order made by dated the day of 19 , a call of Rs. per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of Rs. in respect of the said call ; and whereas the said S. B. has proposed to pay to the said official liquidator the sum of Rs. by way of compromise, and in satisfaction and discharge of the said sum of Rs. and of all liability whatsoever, as a contributory of the said company; and whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company hath, in exercise of the power for that purpose given to him by the above Act, agreed to accept the same subject to the sanction of the Court, and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto :

1. That the said official liquidator shall, before the day of next, apply to a Judge of the said Court, at Chambers, to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Judge the said S. B. shall, within day next after such sanction, pay to the said official liquidator the said sum of Rs. and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said company, and all claims and demands whatsoever which the said S. B. has or may have against the said company in respect of the said shares, or the distribution of the assets of the said company, otherwise howsoever.

3. That the said sum of Rs. and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the company or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. H. in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5. That in case this agreement shall be sanctioned by the said Judge and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of Rs. or so much thereof as shall then remain due and owing and unpaid, as if this agreement had not been entered into.

Witness to the signatures of
the said R. P. H. and S. B.
C. D. of etc.

R. P. H.,
Official Liquidator.
S. B.

FORM No. 58.

(Rule 73.)

(*For general heading, see rule* 1.)

The Judge has sanctioned this agreement of compromise.

Memorandum of sanction of Judge to agreement of compromise.

FORM No. 59.

(Rule 74.)

(*For general heading, see rule* 1.)

Order on memorandum of the sanction of the Judge for certain acts to be done by official liquidator.

The Judge doth hereby sanction (or has sanctioned) the following proceedings being taken (or acts being done) by the official liquidator of the abovenamed company, namely (*state the proceedings to be taken or acts to be done as*) the bringing or instituting and prosecuting an action in the name and on behalf of the said company against, or defending an action brought against the said company, by K. M. of etc., to recover a debt or sum of Rs. alleged to be due from (or to) the said K. M. to (or from) the said company, etc.

FORM No. 60.

(Rule 82.)

Appearance Book.

In the matter, etc.

Appearance Book.

Date when appearance entered.	Party's name.	Whether creditor or contributor.	If he appears in person, his address for service	If he appears by an attorney, his attorney's name	Attorney's address	Amount of debt (or number of shares)

FORM No. 61.

(Rule 86.)

(*For general heading, see rule* 1.)

Form of order transferring, winding up

It is hereby ordered that all the winding up proceedings in the above matter, together with all documents and papers thereto relating, and all moneys and securities standing therein

to the credit of the official liquidator, be and they are hereby transferred from the said High Court to the District Court at and the said District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

proceedings from High Court to District Court.

Dated this day of 19 .

A. B.,
Judge of High Court.

FORM No. 62.

(Rule 86.)

(*For general heading, see rule* 1.)

It is hereby ordered that all the winding up proceedings in the above matter, together with all documents and papers relating thereto, and all moneys and securities standing therein to the credit of the account of the official liquidator, be and they are hereby transferred from the District Court at to the District Court at and the said last-mentioned District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Form of order transferring winding up proceedings from one District Court to another.

Dated this day of 19 .

A. B.,
Judge of High Court.

FORM No. 63.

(Rule 87.)

(*For general heading, see rule* 1.)

I hereby declare that R. P. H., the official liquidator of the abovenamed company, has passed his final account as such official liquidator, and that the balance of Rs. hereby found to be due to (or from) the said official liquidator has been paid in the manner directed by the order dated the day of 19 , and that the affairs of the said company have been completely wound up.
Dated this day of 19 .

Declaration of the company being wound up, and of the official liquidator having passed his final account.

A. B.,
Judge.

FORM NO. 64.

(Rule 88.)

(*For general heading, see rule* 1.)

Order to dissolve the company.

Upon the application of the official liquidator of the abovenamed company, and upon reading an order dated the day of and the declaration of the Court dated the day of whereby it appears that the affairs of the said company have been completely wound up, and that the balance of Rs. due from (or to) the official liquidator has been paid in manner directed by the said order. It is ordered that the said company be dissolved as from this day of 19 , and that the recognizance, dated the day of 19 , entered into by the said official liquidator together with W. B. and S. P. his sureties be vacated.

A. B.,
Registrar

or A. B.,
District Judge.

FORM NO. 65.

(Section 181 of the Act.)

(*For general heading, see rule* 1.)

Sanction of appointment of Attorney by Official Liquidator and appointment.

The Court sanctions the official liquidator appointing an advocate attorney (or vakeel) to assist him in the performance of his duties.

L. H.

I hereby appoint to be my attorney in this matter, dated this day of 19 .

R. P. H.,
Official Liquidator.

FORM No. 66.

(Sections 185 and 187 of the Act.)

(*For general heading, see rule 1.*)

Upon the application of, etc., and on reading, etc. It is ordered that A. B. of etc. do. within four days after service hereof pay to (or deliver, convey, surrender or transfer to or into the hands of) R. P. H., the official liquidator of the said company, at the office of the said R. P. H., situate at etc., the sum of rupees , being the amount of debt appearing to be due from the said A. B. on his account with the said company (or any sum or balance books, papers, estates or effects specifying the property) now being in the hands of the said A. B., and to which the said company is *primâ facie* entitled (*or otherwise as the case may be*).

Order for payment of money or delivery of book, etc., to the official liquidator.

FORM No. 67.

(Section 195 of the Act.)

(*For general heading, see rule 1.*)

A. B. of etc., and E. F. of etc., are hereby severally summoned to attend at on the day of 19 , at of the o'clock in the noon, to be examined on the part of the said official liquidator (or of W. D. of etc.) for the purpose of proceedings directed by the said Court to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce at the time and place aforesaid, a certain indenture (*describe documents*) and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the abovenamed company].

Summons for persons to attend at Chambers to be examined.

Dated this day of 19 . This summons was taken out by Messrs. C. & D. of , attorneys for the official liquidator (or for the said W. D.)

FORM No. 68.

(Section 208 of the Act.)

Liquidator's notice of Appointment

To

The Registrar of Joint Stock Companies (or such person or officer as may have been authorised or appointed by the Local Government under the provisions of section 248(6) of Act VII of 1913).

In the matter of (*set out name of the company*).

SIR,

Pursuant to section 208(1) of the Indian Companies Act (VII of 1913), I have the honour to give you notice that by a special (or extraordinary) resolution dated (*give date*) copy of which is hereto annexed, I the undersigned have been appointed Liquidator in the voluntary winding up of the said Company. Please receive and file this notice.

I have, etc.

FORM No. 69.

(Sections 216 and 244 of the Act.)

(*For general heading, see rule* 1.)

Liquidator's Statement of Account

Name of Company

Nature of proceedings (whether wound up by the Court, or under the supervision of the Court, or voluntarily)

Date of commencement of winding up

Date to which statement is brought down

Name and address of liquidator

This statement is required in duplicate.

REALIZATIONS.				DISBURSEMENTS			
Date	Of whom received.	Nature of assets realized.	Amount	Date	To whom paid	Nature of disburse-ments	Amount
			Rs A P.				Rs A P.
		Brought forward..				Brought forward..	
		Carried forward				Carried forward	

ANALYSIS OF BALANCE.

	Rs. A. P.
Total realizations	
„ disbursements	
Balance ..	

The balance is made up as follows :—

	Rs. A. P.	Rs. A. P.
1. Cash in hands of liquidator . ..		
2. Total payments into Bank, including balance at date of commencement of winding up (as per Bank Book), .		
Total withdrawals from Bank ..		
Balance at Bank .		
3. Account in Companies liquidation account .		
4. Amounts invested by liquidator		
Less amounts realized from same ..		
Balance ..		
Total balance as shown above ..		

(NOTE.—Full details of stocks purchased for investment and of realization thereof should be given in a separate statement).

NOTE.—The liquidator should also state

		Rs.
(1) The amount of the estimated assets and liabilities at the date of the commencement of the winding up.	Assets (after deducting amounts charged to secured creditors and debenture-holders) ..	
	Liabilities: Secured creditors	
	Debenture-holders	
	Unsecured creditors	

		Rs.
(2) The total amount of the capital paid up at the date of the commencement of the winding up	Paid up in cash ..	
	Issued as paid up otherwise than for cash ..	

	Rs.
(3) The general description and estimated value of outstanding assets (if any).	
(4) The causes which delay the termination of the winding up.	
(5) The period within which the winding up may probably be completed.	

Form No. 70.

(Section 244 of the Act.)

(*For general heading, see rule* 1.)

Affidavit verifying Statement of Liquidator's Account.

I , of , the liquidator of the above-named company, make oath and say :—

That *the account hereunto annexed marked contains a full and true account of my receipts and payments in the winding up of the above-named Company,* from the day of , 19 , to the day of 19 , inclusive, *and that* I have not nor has any other person by my order, or for my use during such period, received or paid any moneys on account of the said Company, *other than and except the items mentioned and specified in the said account.*

I further say that the particulars in the annexed Form 69 marked with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at

Note.—If no receipts or payments, strike out the words in italics.

RULES OF THE HIGH COURT OF JUDICATURE AT BOMBAY UNDER THE INDIAN COMPANIES ACT, 1913, BOTH FOR THE HIGH COURT AND THE COURTS SUPORDINATE THERETO.

PRELIMINARY

1. The following shall be used as general headings in all cases under these rules relating to companies in the High Court of Judicature at Bombay and in the Courts subordinate thereto. **General headings.**

A.—For proceedings before the Judge in Chambers or in Court :—

In the High Court of Judicature at Bombay (*or* in the District Court of [*as the case may be*].

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

B.—For all advertisements, notices and other proceedings not before the Judge in Chambers or in Court :—

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

C.—In cases where it is required the words "and reduced" shall be added to the description of the Company.

2. In the High Court of Judicature at Bombay all petitions shall be presented, applications made to, and proceedings taken under the direction of, the Judge who may be sitting in Chambers for the time being: Provided nevertheless that the said Judge may refer any matter so brought before him into Court, or to any other Judge of the High Court. In the Mofussil of the Bombay Presidency all petitions shall be presented, application made to, and proceedings taken under the direction of, the Judge for the time being of the District Court within whose jurisdiction the registered office of the company may be situate. **Presentation and hearing of petitions and of all applications and proceedings. Presentation, &c., of petitions, &c.**

Rules as to Reduction of Capital.

Petition to reduce capital, "and reduced" under Section 57 of the Act.

3. An order dispensing with the addition of the words "and reduced" in cases where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any share-holder of any paid-up share capital, may be obtained in Chambers either on application *ex-parte* by summons before the presentation of the petition or at the time when the petition is presented.

Practice in cases where creditors are not entitled to object.

4. In cases where the creditors of the Company are not entitled, under the provisions of section 58 of the Indian Companies Act, 1913 (in these rules called "the Act"), to object to the proposed reduction, a certificate shall not be granted as is hereinafter provided by Rule 16 but the petition shall, if necessary, be answered and shall come on for hearing in the ordinary way. In all other cases the Rules hereinafter provided with reference to petitions to reduce capital shall be followed.

Practice where creditors are entitled to object.

5. In cases in which the creditors are entitled to object to the proposed reduction, the petition shall not come on to be heard in Chambers until after the expiration of 14 clear days from the filing of such certificate as is mentioned in Rule 16 hereafter.

Proceedings after petition presented.

6. When any such petition as last aforesaid has been presented, application may be made *ex-parte*, by summons in Chambers to the sitting Judge in Chambers for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the Judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to section 58 of the Act; and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in Rules 7, 8, 11, 12 and 13. The order upon such summons may be in Form No. 1 in the first schedule to these rules (hereinafter in these rules called "the first schedule hereto"), with such variations as the circumstances of the case may require.

Advertisement of petition.

7. Notice of the presentation of the petition shall be published at such times and in such newspapers in English and in the Vernacular as the Judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed, as mentioned in the last preceding Rule. Such notice may be in Form No. 2,

with such variations as the circumstances of the case may require.

8. The company shall, within such time as the Judge shall direct, file in Court an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in Rule 6 herein, and the nature and amounts due to them, respectively, or, in case of any debt payable on a contingency or not ascertained, or any claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated, of such debt or claim. **Affidavit as to creditors.**

9. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim which, if that date was the commencement of the winding up of the company, would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in Form No. 3, with such variations as the circumstances of the case may require. **Form of affidavit.**

10. Copies of such list, containing the names and addresses of the creditors, and the total amount due to them, but omitting the amounts due to them, respectively, or (as the Judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the offices of their attorneys and agents (if any), and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee. **Inspection of list of creditors.**

11. The company shall, within seven days after the filing of such affidavit, or such further time as the Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the Judge) within which, where he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company; and such notice shall be sent through the post in a registered letter addressed **Notice to creditors.**

to each creditor at his last known address or place of abode, and may be in Form No. 4 with such variations as the circumstances of the case may require: Provided that where any of the creditors of the company are residing out of British India, or where the names of any of the creditors are not known to the company, the Judge may direct notice to be given to them by advertisement in such papers and at such times as he may think proper.

Advertisement as to list of creditors.

12. Notice of the list of creditors shall, after the filing of the affidavit mentioned in Rule 8, be published at such times and in such newspapers as the Judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of the creditors may be inspected, and the time within which creditors of the company, whose names are not entered on the said list, and who are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their attorneys (if any), to the attorney of the company; and such notice may be in Form No. 5 with such variations as the circumstances of the case may require.

Affidavit as to result of Rules 11 and 12.

13. The company shall, within such time as the Judge shall direct, file in Court an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in Rules 11 and 12 required to be sent in, stating the result of such notices, respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices, respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in Form No. 6 with such variations as the circumstances of the case may require.

Proceedings where claim not admitted.

14. Where any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim,

the company shall, where the Judge thinks fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than 14 clear days after such notice, and being the time appointed by the Judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in Rule 11 and may be in the Form No. 7 with such variations as the circumstances of the case may require.

15. Such creditors as come in to prove their debts of claims in pursuance of such notice as is mentioned in Rule 14 shall be allowed their costs of proof against the company and such costs shall be added to their debt; or the said creditors may be answerable for costs in the event of their proof not being established. **Costs of proof.**

16. The result of the settlement of the list of creditors shall be stated in a certificate which shall be signed by the Judge, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 59 of the Act, and the debts or claims (if any) the full amount of which is not admitted by the company nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 59 of the Act and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid. **Certificate by the Judge as to creditors.**

17. After the expiration of eight clear days from the filing of such last-mentioned certificate the petition shall be set down for hearing in the ordinary course upon a præcipe addressed to the Prothonotary by the petitioner or his attorney to have the petition set down for hearing. **Petition to come on for hearing.**

Advertisement of hearing. 18. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers, in English and the vernacular, as the Judge shall direct. Such notices may be in the Form No. 8 with such variations as the circumstances of the case may require.

Who may appear. 19. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by section 59 of the Act, and who has not before the hearing consented in writing to the proposed reduction of capital, may, where he thinks fit, upon giving two clear days' notice to the attorney of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

Costs of appearance. 20. When a creditor who appears at the hearing under the last preceding rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of whose debt or claim has not been inquired into and adjudicated upon under section 59 of the Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing, under the last preceding rule, shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Directions at hearing. 21. When the petition comes on to be heard, the Judge may, where he shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, where the Judge shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Order confirming reduction. 22. Where the Judge makes an order confirming a reduction, such order shall give directions in what manner and in what newspapers, in English and the vernacular, and at what times, notice of the registration of the order and of such minute as is mentioned in section 61 of the Act, is to be published; and unless the Judge shall have dispensed altogether with the addition of the words "and reduced," or shall then dispense with the further use thereof, shall fix

the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in section 57 of the Act.

23. Where the Judge thinks fit to require the company to publish the reasons for the reduction of its capital, or any other information in regard thereto or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and in the vernacular, as the Judge shall think proper. **Publication of reasons for reduction, &c.**

RULES AS TO WINDING UP.

24. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, after admission, shall be advertised fourteen clear days before the hearing, as follows — **Petition to wind up company. Advertisement of petition**

(1) In the case of a company whose registered office, or where there shall be no such office, then whose principal or last known principal place of business is, or was, situate within the local limits of the Ordinary Original Civil Jurisdiction of the High Court at Bombay, once in the *Bombay Government Gazette*, and once at least in two English daily newspapers and two vernacular newspapers, published in Bombay, unless the Judge otherwise directs.

(2) In the case of any other company, once in the *Bombay Government Gazette*, and once at least in two local newspapers, or where there should be none such, in two newspapers circulating in the district where such registered office or principal, or last known principal, place of business, as the case may be, of such company, is or was situate, and also by proclamation affixed to the walls of the Court House, unless the Judge otherwise directs.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his attorney (if any). (Form No. 9.)

25. Every such petition shall, unless presented by the company, be served at the registered office (if any) of the company, and where there is no registered office, then at the principal or last known principal place of business of the company, where any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being **Service of petition.**

left at such registered office or principal place of business, or by being served on such member or members of the company as the Judge may direct; and every petition for the winding up of a company subject to the supervision of the Court shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company So also every petition for the compulsory winding up of a company shall be served upon the liquidator (if any) who may have been appointed to act in a voluntary winding up, or in a winding up under supervision, as the case may be

Affidavit verifying petition.

26. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in Form No. 10—such affidavit shall be made by the petitioner, or by one of the petitioners where more than one, or in case the petition is presented by the company, by some director, secretary, or other principal officer thereof, and shall be made and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition. Where the petition is presented by a corporate body, other than the company itself, the affidavit shall be made by some director, secretary or other principal officer of such corporate body: Provided that where the petitioner is by reason of absence or for other good cause unable to verify such petition the same may be verified by any person duly authorised by him in that behalf or deemed by the Court competent to verify the same

Copies of petition to be supplied.

27. Every contributory or creditor of the company shall be entitled to be furnished by the attorney to the petitioner with a copy of the petition within twenty-four hours after requiring the same, on paying at the rate of 8 annas per folio of 90 words for such copy.

Petition not to be dismissed if any creditor desires to take advantage of it.

28. Where the petition to wind up has been admitted, the petitioner shall not be entitled to have it dismissed, where any creditor appears and proves his debt and is desirous of taking advantage of the petition.

Order to wind up company. Advertisement and service of order.

29. Every order for the winding up of a company by the Court, or subject to its supervision, shall within twelve days after the date thereof be advertised by the petitioner once in the *Bombay Government Gazette*, and shall be served upon such person (if any), and in such manner, as the Court may direct. (Form No. 13.)

30. Within 10 days after any order for the winding up of a company has been sealed, a summons in Chambers shall be taken out by the petitioner to proceed with the winding up of the company, and in default thereof such summons may be taken out by any other person interested in the winding up to whom the Judge may think fit to give the conduct and prosecution of the said order, and in either case such summons shall be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, where the Judge thinks fit, be fixed for the appointment of an official liquidator, and for the proof of debts and for the list of contributories to be brought in and directions may be given as to the advertisement to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and where necessary, by further summons, and any such directions as aforesaid may be given, added to, or varied, at any subsequent times as may be found necessary

Proceedings on order.

31. The Judge may appoint a person to the office of official liquidator without any previous advertisement or notice to any party, or may fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

Appointment of official liquidator.

32. Where a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed. (Form No. 14.)

Advertisement as to appointment.

33. Every official liquidator shall give security by entering into a recognizance with one or more sufficient sureties, or by depositing Government Securities in such sum as the Court may approve, provided that the Court may, if it thinks fit, dispense with such security (Form No. 16.)

Security of official liquidator.

34. The official liquidator shall be appointed by order; and unless he shall have given security, or unless security shall have been dispensed with, a time shall be fixed by such order within which he is to do so, and the order shall fix the times or periods at which the official liquidator is to file his accounts of receipts and payments, and shall direct that all moneys to be received shall be paid into the Bank of

Order appointing official liquidator.

Bombay or branch thereof nearest to the principal place of business of the Company, or in the case of a District Court into that Court, immediately after the receipt thereof to the account of the official liquidator of the company, and an account shall be opened there accordingly, and if the money is payable into the Bank of Bombay or branch thereof as aforesaid an office copy of the order shall be lodged at the Bank of Bombay or such branch thereof as aforesaid. (Forms Nos. 18 and 22.)

Certificate of security given. 35. Where an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the Prothonotary of the High Court or the District Judge, as the case may be.

Fresh security when required. 36. Except in cases where security has been dispensed with, the official liquidator shall on each occasion of passing his accounts, and also whensoever the Judge may so require, satisfy the Judge that his sureties are living, and resident in the Presidency of Bombay, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

Advertisement of appointment made. 37. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct immediately after he has been appointed and has given security, if any required (Form No 23.)

Provisional official liquidator. 38. Where it is desired to appoint provisionally an official liquidator an application for that purpose may at any time after the presentation of the petition for winding up the company be made by petition without advertisement or notice to any person unless the Judge shall otherwise direct; and such provisional official liquidator may, if the Judge shall think fit, be appointed without security (Form No. 19.)

Vacancy in office of official liquidator 39. In case of the death, removal, or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same.

Accounts. 40. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company; and shall

provide and keep such books of account as shall be necessary, or as the Judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the Act and these Rules.

Official Record Book to be kept by liquidator.

41. The official liquidator shall further keep a book to be called the "Record Book," in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, and all such matters as may be necessary to give a correct view of his administration of the company's affairs.

Remuneration.

42. The official liquidator shall be allowed in his accounts, or otherwise paid, remuneration calculated as follows :-

Scale of fees.

(1) Upon the total assets, including produce of calls on contributories, realised or brought to credit, and not being moneys received and spent on carrying on the business—

	per cent.
On the first Rs. 10,000 or fraction thereof	5
On the next „ 15,000 „ „	3
On the next „ 25,000 „ „	2½
On the next „ 50,000 „ „	2
On any sums above Rs. 1,00,000	1

(2) When the Official Liquidator collects, calls or realises property for debenture holders or other secured creditors, the same rate of fees as under No. (1) above to be paid out of the proceeds of such calls or property.

(3) When the Official Liquidator acts as Trustee under a scheme of arrangement, such remuneration, not exceeding the rate of fees under No. (1) above, as the Court shall allow.

(4) When the Official Liquidator performs any special duties, not provided for above, such amount as the Court on the application of the Official Liquidator may consider reasonable.

He shall also be allowed, unless the Judge otherwise directs, a sum sufficient to cover the expenses of the employment of the assistants or clerks and his office rent, stationery, etc.

(*a*) The rate of remuneration of a liquidator shall in no case exceed the amount specified in the scale of fees given above

(*b*) No officer of the Court acting as liquidator shall settle his remuneration with the attorneys for the parties concerned or with the parties if in person.

Passing accounts

43. The accounts of the official liquidator shall be filed at such times as may from time to time be ordered by the Judge, and shall, upon notice to such persons (if any) as the Judge shall direct, be audited, passed or verified as may be ordered.

Joint official liquidators

44. Where joint official liquidators are appointed the above rules relating to official liquidators shall be applicable *mutatis mutandis.*

Proof of debts. Advertisement for creditors.

45 For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the Judge shall direct, and such advertisement shall fix a time for the creditors to send their names and addresses and the particulars of their debts, or claims, and the names and addresses of their attorneys (if any), to the official liquidator, and appoint a day for adjudicating thereon. (Form No. 24.)

Attendance of creditors

46 The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator, but upon such notice being given, they are to come in, and prove their debts or claims within a time to be therein specified

List of debts

47. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company and he shall make out and file in Court a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims, so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditors, and he shall make and file, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidenee and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief. (Forms Nos. 25 and 26.)

48. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance in such manner as the Judge may direct. **Allowance of debts.**

49. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement or by adjournment (as the case may be) for adjudicating upon such debts and claims. (Forms Nos 28 and 29.) **Proof of debts.**

50. The value of all debts and claims against the company shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company. **Estimation of value of debts and claims.**

51. Creditors whose debts and claims carry interest and are allowed shall be entitled to receive dividends upon what was due for principal and interest at the date of the winding up. In the event of there being a surplus the dividends payable to such creditors shall be applied firstly, towards payment of the interest, and secondly, in reduction of the principal due to them. **Dividends payable, principal and interest.**

Interest may be allowed on all claims in respect of which it is recoverable as damages.

52. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof which will be added to the debt. **Cost of proof.**

53. The result of the adjudication upon debts and claims shall be in the form of certificate to be signed by the Judge from time to time as convenience may require, and such certificate shall state whether the debts or claims are allowed or disallowed and whether allowed as against any particular assets, or in any other qualified or special manner. (Forms Nos. 30 and 31.) **Judge's certificate of debts.**

54. The official liquidator shall, with all convenient speed after his appointment, or at such time as the Judge **List of contributories.**

shall direct, make out and file in Court a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory and distinguish the several classes of contributories. And such list may, from time to time, by leave of the Judge, be varied or added to by the official liquidator. (Forms Nos. 32, 33, 37 and 38.)

Notice of apointment to settle.

55. Upon the list of contributories being filed in Court, the official liquidator shall obtain an appointment for the Judge to settle the same and shall give notice in writing of such appointment to every person included in such list, stating in what character, and for what number of shares or interest such person is included in such list, and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list or such variation or addition (Forms Nos. 34 and 35.)

Judge's certificate

56. A list of contributories as the same shall have been settled by the Judge shall from time to time (when the Judge shall so order) be drawn up by the official liquidator and signed by the Judge for the purpose of stating the result of such settlement down to any particular time, or as to any particular person or stating any variation of the list. (Forms Nos 39 and 40.)

Notice to contributories

57. The official liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 30 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the Court to vary the list.

58. (1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of

contributories as finally settled by the official liquidator shall be entertained after the expiration of 30 days from the date of the service on such person of notice of the settlement of the list.

(2) The official liquidator shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

Sales of property. 59. Any movable or immovable property belonging to the company may be sold with the approbation of the Judge in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the Judge shall so direct, by the official liquidator, in which case the conditions or contracts of sale shall be settled and approved of by the Judge unless he shall otherwise direct and unless on account of the small amount of the purchase-money or other cause. it shall be thought proper that the purchase-money shall be paid to him, all conditions and contracts of sale shall provide that the purchase-money shall be paid by the respective purchasers into the Bank of Bombay or the branch thereof nearest to the principal place of business of the company to the account of the official liquidator of the company or in the case of a District Court, into that Court

Calls. Summons for call. 60 Every application to the Judge to make any call on the contributories or any of them, for any purpose authorised by the said Act, shall be made by summons in Chambers, stating the proposed amount of such call · and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call, or if the Judge shall so direct, notice of such intended call may be given by advertisement or such other public notification as the Judge in his discretion may think sufficient. (Forms Nos. 41, 42 and 43.)

Document making the call. 61. When the official liquidator is authorised by order to make a call on the contributories he shall file in Court a document in Form 45 with such variations as circumstances may require making the call.

Enforcement of call. 62. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the official liquidator, and may be executed as if it were a decree for money. (Forms Nos. 46 and 47.)

Service of order.

63. When any order for a call has been made a copy thereof shall forthwith be served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory, having regard to the provisions of the Act in respect to such call; but such order need not be advertised unless for any special reason the Judge shall so direct. (Forms Nos. 44 and 45.)

Payment in of moneys and deposit of securities. Default of payment into Bank.

64. Where any official liquidator shall not pay all the moneys received by him into the Bank of Bombay or the branch thereof nearest to the principal place of business of the Company, or in the case of a District Court into that Court, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the Judge shall have otherwise directed, such official liquidator shall be charged in his account with rupees ten for every thousand rupees and a proportionate sum for any larger amount retained in his hands beyond such period for every seven days during which the same shall have been so retained and the Judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

Bills, &c., to be deposited in Bank.

65. All bills, hundis, notes and other securities payable to the company, or to the official liquidator thereof, shall, unless the Judge otherwise directs, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of Bombay or the branch thereof nearest to the principal place of business of the company, or in the case of a District Court in that Court, for the purpose of being presented for acceptance and payment, or for payment only, as the case may be.

Calls, &c., to be paid into Bank

66. All orders for payment of calls, balances or other moneys due from any contributory or other person shall direct the same to be paid into the Bank of Bombay or the branch thereof as aforesaid, or in the case of a District Court into that Court, to the account of the official liquidator of the company unless, on account of the smallness of the amount or other cause, it shall be thought proper to direct payment thereof to the official liquidator: Provided that where any such order has been made directing payment of a specific sum into the Bank of Bombay or a branch thereof, or in the case of a District Court into that Court, as aforesaid, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other

proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made, without notice for the payment of the same sum to the official liquidator.

67. At the time of the service of any order for payment into the Bank of Bombay or a branch thereof or into a District Court as aforesaid the official liquidator shall give to the party served a notice to the purport or effect set forth in Form No 48 for the purpose of informing him how the payment is to be made, and before the time fixed for such payment the official liquidator shall furnish the cashier of the Bank of Bombay or the branch thereof as aforesaid, or in the case of a District Court the Nazir thereof, with a certificate to the purport or effect set forth in Form No 49 to be signed by such cashier or Nazir as the case may be and delivered to the party paying in the money therein mentioned Notice as to payment into Bank.

68 For the purpose of enforcing any order for payment of money into the Bank of Bombay or a branch thereof as aforesaid, or in the case of a District Court into that Court, an affidavit of the official liquidator to the purport or effect set forth in Form No 51 shall be sufficient evidence of the non-payment thereof Affidavit of non-payment.

69. All moneys, bills, hundis, notes and other securities, paid and delivered into the Bank of Bombay or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be placed to the credit or account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly (Form No 22) Title of account in Bank.

70 All bills, hundis, notes and other securities delivered into the Bank of Bombay or a branch thereof as aforesaid, or in the case of a District Court into that Court, shall be delivered out upon a request signed by the official liquidator and such other person, if any, as the Judge may direct; and the moneys placed to the account of the official liquidator shall be paid out upon such cheques or order signed by the official liquidator and such other person, if any, as the Judge may direct (Form No. 22) Delivery out of Securities and payment out, and investment of Moneys. Requests and cheques.

71. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of Bombay or a branch thereof as aforesaid, Investment

or in the case of a District Court in that Court, and not immediately required for the purposes of winding up may be invested in the purchase of Government Promissory Notes in the name of the official liquidator. All investments of moneys in the Bank of Bombay or a branch thereof as aforesaid shall be made by the Bank of Bombay upon a request signed by the official liquidator and countersigned by the Judge or one of the Judges of the Court unless the Judge otherwise directs; and all investments of moneys standing to the credit of the account of the official liquidator in a District Court shall be made upon a request signed by the official liquidator and addressed to such Court: such request, respectively, shall be sufficient authority for debiting the account with the purchase-money; and such Government notes shall be retained by or deposited with the Bank of Bombay or by or with the said District Court in the name and on behalf of the official liquidator, and such notes shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose signed by the official liquidator, and countersigned by the Judge or one of the Judges of the Court or under an order made by the Court. (Forms Nos. 52 and 53.)

Receipt of dividends

72. Subject to any special order which the Judge may make, all dividends and interest to accrue due from any such notes shall from time to time be received by the Bank of Bombay under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator, and when any of such notes shall become payable the same shall be renewed or the principal and interest due thereon be received and placed to the credit of the account of the official liquidator.

Meetings of creditors or contributories Notice.

73. Where the Court shall direct a meeting of the creditors or contributories of the company to be summoned under section 239 of the Act, or where the official liquidator, either of his own motion or at the direction or request of the creditors or contributories under section 183 of the Act, shall summon such a meeting, he shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which it is desired to ascertain the wishes of the creditors or contributories, or where the Court shall so direct, such notice may be given by advertisement in the daily papers, in which case the object of the meeting need not be stated and it shall

not be necessary to insert such advertisement in the *Bombay Government Gazette.* (Form No. 54.)

Memorandum as to calling Meeting.

74 The direction of the Judge for any meeting of creditors or contributories under section 239 of the Act, and the appointment of a person to act as Chairman of any such meeting shall be testified by a memorandum signed by the Judge or one of the Judges of the Court or by the Prothonotary under the direction of the Judge. In the case of a meeting summoned by the official liquidator under section 183 of the Act he or some one nominated by him, shall be Chairman (Form No 55)

Votes. Chairman's report

75 The votes of the creditors or contributories of the company at any meeting summoned in accordance with rule 73 may be given either personally or by proxy, but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed. and no contributory shall appoint a proxy who is not a contributory of the company (Form No 56)

The Chairman of a meeting summoned by the direction of the Court shall report the result thereof to the Court (Form No 57)

Sanction to bills of exchanges, &c.

76 The sanction of the Judge to the drawing, accepting, making and endorsing of any bill of exchange, hundi or promissory note by any official liquidator. shall be testified by a memorandum on such bill of exchange, hundi or promissory note signed by the Judge or one of the Judges of the Court, or by the Prothonotary under the direction of the Judge (Form No 58.)

Sanction of Judge on compromise.

77 Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the company shall be supported by the affidavit of the official liquidator stating that he has investigated the affairs of such contributory or person, and believes that the proposed compromise will be beneficial to the company, and giving his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum signed by the Judge or one of the Judges of the Court or by the Prothonotary under the direction of the Judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose. (Forms Nos. 59 and 60.)

In cases under section 179.

78. The direction or sanction of the Judge for any proceeding or act to be taken or done by the official liquidator under the powers conferred on him by section 179 shall (subject to the provisions of section 180 of the Act) be obtained upon application in writing and an order shall be drawn up thereon, unless the Judge shall otherwise direct. (Form No. 61.)

Application to the Court under ss. 183, 207, 212, 215 and 237 of the Act. Application how made.

79. Every application under secitons 183 (3), 183 (5), 207 (viii), 207 (ix), 212 (2) and 215 of the Act shall be made by petition or, if the Court shall so direct, by summons in Chambers. and every application under section 237 of the Act shall be made by petition

Insertion of advertisements.

80. When an advertisement is required for any purpose, except where otherwise directed by these Rules, the advertisement shall be inserted once in the *Bombay Government Gazette* and in such other newspaper or newspapers, and for such number of times as may be directed The Judge, however, may, in such cases as he shall think fit dispense with any adertisement required by these Rules

Affidavits. Filing and office copies of Affidavits

81. Where an order shall have been made for the winding up of any company, any person intending to use any affidavit in any proceeding under such order shall file the same in Court, and serve a copy thereof on the official liquidator. The person other than the official liquidator filing the affidavit shall nct be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Judge shall otherwise direct

Register of proceedings.

82 A Register shall be kept by the Court of all proceedings in each matter in a book set apart for that purpose.

Provisional official liquidator.

83. All the above Rules relating to official liquidators shall, so far as the same are applicable and subject to the directions of the Court or the Judge in each case. apply to provisional liquidators.

Attendance and appearance of parties

84. No order to the prejudice of contributories or creditors shall be made *ex parte* on the application of the official liquidator and every person for the time being on the list of contributories of the company filed in Court by the official liquidator, and every person having a debt or claim against

the company allowed by the Judge shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of, but if the Judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company he may direct such costs, or a gross sum in lieu thereof, to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

85. The Judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit to represent before him at the expense of the company all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall unite in employing the same attorney to represent them. **Appointment of representative party.**

86. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he has filed an appearance with the Prothonotary. A book to be called the Appearance Book shall be kept in which all such appearances shall be entered. (Form No. 61A.) **Appearance to be filed before attendance.**

87. Services upon contributories and creditors shall be effected, except where personal service is required, by sending the notice, or a copy of the petition, summons or order or other document, through the post in a registered letter, addressed to the attorney (if any) of the party to be served or otherwise to the party himself, if a contributory, to his last known address or place of abode, and if a creditor, to the address given by him pursuant to Rule 45 and such notice or copy, petition, summons, order, or other document shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office, and notwithstanding the same may be returned by the Post Office. **Service of summonses, notices, &c. Service how effected.**

88. No service under these Rules shall be deemed invalid by reason that any name other than the surname of the person (if the said person be a European) or any name other than the final name ordinarily used by the person (being other than a **Name of person incomplete.**

European) on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories or in the petition, summons, order, notice, or other document, wherein the name of such contributory or creditor is contained, provided the Court is satisfied that such service is in other respects sufficient.

Transfer of winding up from High Court to District Court under sections 164 and 165 of the Act

89. Applications for the transfer of winding up proceedings either from the High Court to a District Court, or from one District Court to another, as the case may be, shall be made by petition which shall be filed in Court. Upon the filing of such petition as aforesaid the Judge shall give such orders and directions and direct that an advertisement thereof be made as the nature of the case may require, and shall fix a date for the hearing of such petition.

Order for transfer.

90. Where the petition in the last preceding Rule has been heard and an order thereon passed by the Court, the Court shall thereupon make an order for transferring the winding up proceedings. (Forms Nos. 62 and 63.)

Termination of winding up proceedings.

91. Upon the termination of the proceedings for the winding up of any company a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit: and the official liquidator shall pass his final account, and the balance (if any) due on the final account shall be certified by the Judge, and upon payment by the official liquidator of the balance (if any) in such manner as the Judge shall direct, the recognizances entered into by the official liquidator and his sureties may be vacated. (Form No. 65.)

Dissolution of company.

92. Where the official liquidator has passed his final account, and the balance (if any) due thereon has been paid in such manner as the Judge shall direct, the official liquidator shall, in case the company has not been already dissolved, apply to the Judge for an order that the company be dissolved from the date of such order. (Form No. 66.)

Deposit of proceedings in Court.

93. When the proceedings for winding up any company have been completed, the file of proceedings and the book containing the official liquidator's account shall be deposited in the records of the Court.

Notice by liquidator in

94. The liquidator in a voluntary winding up shall, within 21 days after his appointment, file with the Registrar

of Joint Stock Companies a notice of his appointment as required by section 208 of the Act.

voluntary winding up of his appointment.

95. The statements with respect to the proceedings in and position of the liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be filed with the Registrar twice in every year as follows :—

Times for filing liquidator's statements and regulations applicable thereto.

(1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding up, shall be filed within 30 days from the expiration of such 12 months; and the subsequent statements shall be filed at intervals of half a year, each statement being brought down to the end of the half year for which it is filed.

(2) Form No. 68, with such variations as the circumstances may require, shall be used.

(3) Every statement shall be verified by affidavit in Form No. 69.

96. The statements required by section 216 of the Act to be laid before the general meetings of a company, the voluntary winding up of whcih continues for more than one year, shall, with such variations as circumstances may require, be in the same form and contain the same particulars as the statements mentioned in Rule 95.

Liquidator's statements in voluntary liquidations.

97. The Forms set forth in the first schedule with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

Forms.

98. The attorney, or, in Courts other than the High Court, the vakeel, of the official liquidator shall conduct all such proceedings as are ordinarily conducted by attorneys of the High Court, or by vakeels in such other Courts; and where the attendance of his attorney or vakeel is required on any proceedings in Court or Chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his attorney or vakeel, or the Court shall direct him to attend.

Duties of attorney of official liquidator.

99. Attorneys and vakeels shall be entitled to charge and be allowed the fees set forth and referred to in the second

Attorney's fees.

schedule to these rules (so far as the same are applicable) unless the Court shall otherwise specially direct.

Taxation of Costs.

100. Where an order is made by the High Court in Court or in Chambers for payment of any costs, the order shall direct the taxation thereof by the Taxing officers; except in cases where a gross sum in lieu of taxed costs is fixed by the order.

General Power of Court.

101. The power of the Court or a Judge to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

Accounts, &c., to be filed in Prothonotary's office.

102. All accounts, lists, notices and other documents directed by these Rules to be filed in Court shall be filed in the office of the Prothonotary of the Court.

General practice to apply.

103. In cases not provided for by these rules or by rules of procedure laid down in the Act, the practice and procedure of the High Court of Justice in England in matters relating to companies shall be followed so far as they are applicable and not inconsistent with these rules and the Act.

Affidavits and attorneys.

104. In all cases in which by law a person may make a solemn affirmation instead of an affidavit, the word affidavit in these rules shall be deemed and taken to mean a solemn affirmation; and in proceedings in Courts, other than the High Court on its original jurisdiction side, the word attorney in these rules shall be deemed and taken to mean a vakeel.

Application of rules.

105. These Rules apply to proceedings under the Indian Companies Act, 1913; as to winding up proceedings continued under the Indian Companies Act, 1882, in pursuance of section 284 of the Act, the same shall be regulated by the rules made under the Indian Companies Act, 1882, which rules, for the purpose of such winding up, shall be deemed to remain in full force.

Forms (Companies Rules).

First Schedule.

FORMS IN PROCEEDINGS FOR REDUCTION OF CAPITAL.

1. Form of order (Rule 6).
2. Advertisement, presentation of petition (Rule 7).
3. Affidavit verifying list of crditors (Rule 9).

4. Notice to creditor (Rule 11).

5. Advertisement of list of creditors (Rule 12).

6. Affidavit of list of persons who have sent in claims (Rule 13).

7. Notice to creditors to come in and prove debt (Rule 14).

8 Advertisement of day fixed for hearing petition (Rule 18).

FORMS IN WINDING UP PROCEEDINGS.

9. Form of advertisement of petition to wind up (Rule 24).

10. Affidavit verifying petition (Rule 26).

11. Form of order for winding up by the Court (Secs. 162 and 170 of the Act).

12. Form of order for winding up, subject to supervision (Secs. 221 and 222 of the Act).

13. Advertisement of order to wind up (Rule 29).

14. Advertisement of time and place fixed for the appointment of official liquidator (Rule 32).

15. Proposal for appointment of official liquidator (and sureties) when form No. 14 has been issued.

16. Recognizance of official liquidator and sureties (Rule 33).

17. Affidavit of sureties (Rule 33).

18. Order appointing official liquidator (Rules 33 and 34).

19. Order appointing a provisional official liquidator (Rules 33, 34, 38, and 83).

20. Sanction of appointment of attorney or vakeel to official liquidator and appointment (Sec. 181 of the Act).

21. Order for payment of money or delivery of books, &c., to the official liquidator (See sections 185 and 187 of the Act).

22. Direction to open account at the Bank of Bombay (Rules 34, 59, 64, 69, and 70).

23. Advertisement of appointment of official liquidator (Rule 37).

24. Advertisement for creditors (Rule 45).

25. Affidavit of official liquidator as to debts and claims (Rule 47).

26. Exhibit referred to in affidavit (No. 25).

27. Notice to creditors of allowance of debt (Rule 48).

28. Notice to creditors to come in and prove their debts (Rule 49).

29. Affidavit of creditor in proof of debt (Rule 49).

30. Settlement by the Judge of debts and claims (Rule 53).

31. Notice to creditor to attend to receive debt (Rule 53).

32. Affidavit in support of list of contributories (Rule 54).

33. List of contributories referred to in form No. 32 (Rule 54).

34. Notice to contributories of appointment to settle list of contributories (Rule 55).

35. Affidavit of service of notice (Rule 55).

36. The schedule referred to in form No. 35.

37. Affidavit in support of supplemental list of contributories (Rule 54).

38. Supplemental list of contributories referred to in form No. 37.

39. Settlement by the Judge of list of contributories (Rule 56).

40. Order on application to vary list (Rule 56).

41. Affidavit of official liquidator in support of proposal for call (Rule 60).

42. Summons for intended call (Rule 60).

43. Advertisement of intended call (Rule 60).

44. General order for a call (Rule 63).

45. Notice to be served with the general order for a call (Rule 63).

46. Affidavit in support of application for order for payment of call due from contributory (Rule 62).

47. Order for payment of call due from contributory (Rule 62).

48. Notice to be endorsed on or served with every order directing payment of money into the Bank of Bombay or into Court (Rule 67).

49. Certificate of payment of money into the Bank of Bombay or into Court.

50. Affidavit of service of order for payment of call (Rule 62).

51. Affidavit of non-payment of money by order directed to be paid into the Bank of Bombay or into Court (Rule 68).

52. Request to invest cash in Government promissory notes (Rule 71).

53. Request to sanction investment of cash in Government promissory notes to the District Court (Rule 71).

54. Notice (or advertisement) of meeting of creditors or contributories (Rule 73).

55. Memorandum of appointment of a person to act as chairman at meeting of creditors or contributories (Rule 74).

56. Appointment of proxy to vote at meeting of creditors or contributories (Rule 75).

57. Chairman's report of result of meeting of creditors or contributories (Rules 73, 74, and 75).

58. Memorandum of sanction of Judge to accepting bills of exchange (Rule 76).

59. Memorandum of agreement of compromise with a contributory (Rule 77).

60. Memorandum of sanction of Judge to agreement of compromise.

61. Order or memorandum of the sanction of the Court for certain acts to be done by the official liquidator (Rule 78).

61A. Appearance Book (Rule 86).

62. Form of order transferring winding up proceedings from High Court to a District Court (Rule 90).

63. Form of order transferring winding up proceedings from one District Court to another (Rule 90).

64. Summons for persons to attend at Chambers to be examined (Sec. 195 of the Act).

65. Declaration of the company being completely wound up, and of the official liquidator having passed his final account (Rule 91).

66. Order to dissolve the company (Rule 92).

67. Notice by liquidator in voluntary winding up of his appointment (Rule 94).

68. Liquidator's statement of account (Rule 95).

69. Affidavit verifying statement of liquidator's account (Rule 95).

THE FIRST SCHEDULE

FORMS IN PROCEEDINGS FOR REDUCTION OF CAPITAL.

No. 1.—*Form of Order*

(RULE 6.)

[*For general heading, see rule* 1.]

Upon the application of the petitioners by summons, dated and upon hearing the attorneys for the petitioners, and on reading the petition on the day of preferred unto the Honourable the Chief Justice and the Judges of the said High Court. It is ordered, that an enquiry be made what are the debts, claims and liabilities of or affecting the said company on the day of 19 , and that notice of the presentation of the said petition be inserted in ( ) on the day of and ( ) and that a list of the persons who are creditors of the company on the said day of and the affidavit verifying the same be filed in the office of the Prothonotary of the said High Court on or before the day of

And it is further ordered that any creditor whose name does not appear in such list or who claims to be a creditor for a larger amount than that for which he is entered in such list shall on or before the day of send in his name and address and the particulars of his debt or claim and the name and address of his attorney (if any) to the attorney of the company and it is further ordered that the notice of the day so fixed as last aforementioned

shall be given in writing by registered post to every creditor whose name appears in such list and such notice shall be inserted in on the day of and in on the day of and it is further ordered that the attorney of the company and some competent officer or officers of the company do on or before the day of make and file an affidavit stating the result of such notices and verifying the names and addresses of the persons (if any) who shall have sent in particulars of their debts and claims in pursuance of such notices respectively and the amounts of such debts or claims distinguishing which if any of such debts or claims are wholly or as to any and what part thereof admitted by the company and which (if any) of such debts and claims are wholly or as to any and what part thereof admitted by the company.

No 2.— (*See rule* 7.)

[*For general heading, see rule* 1.]

Notice is hereby given that a petition for confirming a resolution reducing the capital of the above company from rupees to rupees was on the day of presented to the Honourable and is now pending, and that the list of creditors of the company is to be made out as for the day of 19 .

C. & D., attorneys to the company.

No. 3.—*Affidavit verifying list of creditors.*

(Rule 9.)

[*For general heading, see rule* 1.]

I, A. B., of, &c., make oath and say as follows :—

1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the creditors

of and persons having claims upon the said company on the day of 19 (the date fixed by order in this matter dated) together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company. Sworn, etc.

List of creditors referred to in the last form.

A.

In the matter, &c.

This list of creditors, marked A, was producd and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of 19 .

X. Y., &c.

Names, addresses and descriptions of the creditors	Nature of debt or claim.	Amount of debt or claim.

No. 4.—(*See rule* 11.)

[*For general heading, see rule* 1.]

To Mr.

You are requested to take notice that a petition has been presented to the Court of , to confirm a special resolution of the above company for reducing its capital to rupees , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor (*here state the amount of the debt or nature of the claim*).

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above you must on or before the day of send the particulars of your claim and the name and address of your attorney (if any) to the undersigned at In default of your so doing the above entry in the list of creditors will, in all proceedings under the above application to reduce the capital of the company, be treated as correct.

Dated the day of 19 .

A. B.,

Attorney for the said company.

No. 5.—(*See rule* 12).

[*For general heading, see rule* 1.]

Notice is hereby given that a petition has been presented to the High Court of Judicature at Bombay for confirming a resolution of the above company for reducing its capital from rupees to rupees . A list of the persons admitted to have been creditors of the company on the day of 19 may be inspected at the offices of the company at , or at the office of , at any time during usual business hours on payment of the charge of Re. 1.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not

entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his attorneys (if any) to the undersigned at or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of 19 .

A. B.,
Attorney for the said company.

No. 6.—(*See rule* 13.)

[*For general heading, see rule* 1.]

We, C. D., of, &c. (the secretary or agent of the said company), E. F., of, &c. (the attorney of the said company) and A. B., of, &c. (the managing director of the said company), severally make oath and say as follows :—

I, the said C. D., for myself, say as follows :

(Rule 11.) 1. I did, on the day of 19 in the manner hereinafter mentioned serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names and addresses, and descriptions appear in the first column of the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

2. I served the said copies of the said notice upon the persons respectively mentioned in the said list, by sending such copies on the day of by registered post to the said persons respectively to their respective addresses as appearing in the said list, being the last known addresses or places of abode of such person respectively.

And I, the said E. F., for myself, say as follows :

(If notice issued under Rule 12). 3. A true copy of the notice now produced and shown to me, and marked C has appeared in the , of the day of 19 , the of the day of 19 , &c.

(Rule 13.) 4. I have, in the paper writing now produced and shown to me, and marked D, set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice B now produced and shown to me by persons claiming

to be creditors of the said company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

5. I have, in the paper writing now produced and shown to me, marked E, set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of 19 , not appearing on the said list of creditors, marked A, and who claimed to be entered thereon. **(If notice issued under Rule 12.)**

And we, C. D. and A. B. for ourselves, say as follows :

6. We have, in the first part of the said paper writing, marked D (now produced and shown to us) and also in the first part of the said paper writing, marked E (also produced and shown to us), respectively, set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims, respectively as are not wholly admitted (Rule 13.)

7. We have, in the second part of each of the said paper writings, marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company. (Rule 13.)

8 In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be set apart and appropriated in such manner as the Judge shall direct. Sworn, &c

Exhibit D referred to in the last-mentioned affidavit.

D.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said company for *larger amounts* than are stated in list of creditors made out by the company.

This paper writing, marked D, was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this day of 19 .

X. Y., &c.

First part.

Debts and claims wholly or partly admitted by the company.

Names, addresses and description of creditors.	Particulars of debt or claim.	Amount claimed.	Amount admitted by the company to be owing to creditors.	Debts proposed to be set apart and appropriated in full although disputed.

Second part.

Debts and claims wholly disputed by the company.

Names, addresses and description of claimants.	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E referred to in the last affidavit.

E.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company and to be entered on the list of the creditors made out by the company.

.This paper writing, marked E, was produced and shown to C D, E F and A B, respectively, and is the same as is referred to in their affidavit sworn before me this day of 19 .

X. Y., &c.

First part.—(Same as in exhibit D.)

Second part.—(Same as in exhibit D.)

Note.—The names are to be inserted alphabetically.

No. 7.—(*See rule* 14.)

[*For general heading, see rule* 1.]

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit, and giving notice thereof to Mr. the attorney of the company, on or before the day of next · and you are to attend in person or by your attorney at the Chambers of the Honourable at the High Court on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or document relating to your claim.

In default of your complying with the above directions you will (be precluded from objecting to the proposed reduction of the capital of the company), or (in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated this day of 19 .

A. B.,

Attorney for the said company.

No. 8.—(*See rule* 18.)

[*For general heading, see rule* 1.]

Notice is hereby given that a petition presented to the Honourable on the day of , for confirming a resolution reducing the capital of the above company from Rs. to Rs. , is directed to be heard before the Honourable on the day of 19

C. and D. of

(Agents for E. and F. of

Attorneys for the company.

Forms in winding up proceedings.

No. 9.—*Advertisement of petition*

(Rule 24.)

[*For general heading, see rule* 1.]

Notice is hereby given that a petition for the winding up of the abovenamed company by the (*or* subject to the supervision of the) High Court of Judicature at Bombay (*or* District Court of) was on the day of 19 presented to by the said company (*or* A. B. of , a creditor *or* contributory of the said company *or as the case may be*). And that the said petition is directed to be heard before on the day of 19 ; and any creditor or contributory of the said company, desirous to oppose the making of an order for the winding up of the said company under the above Act, should appear at the time of hearing by himself or his counsel for that purpose ; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D. of, &c.,

Attorneys for the petitioners.

No. 10.—*Affidavit verifying petition.*

(RULE 26.)

[*For general heading, see rule* 1.]

I, A. B. of, etc., make oath and say (*or* do solemnly affirm) that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other persons or person I believe to be true

Sworn, &c.,
or Solemnly affirmed, &c.

No. 11.—*Order for winding up by the Court*

(Secs. 162 and 170 of the Act.)

[*For general heading, see rule* 1.]

Upon the petition of the abovenamed company *or*, A. B. of, etc., a creditor (*or* contributory of the abovenamed company) on the day of 19 , preferred unto the said Court, and upon hearing counsel for the petitioner, and for , and upon reading the said petition, an affidavit (*or* solemn affirmation) of the said petitioner, filed &c., verifying the said petition, and affidavit (*or* solemn affirmation of S. M) filed the day of 19 , the *Bombay Government Gazette* of the day of , the of the day of (*enter any other paper*) each containing an advertisement of the said petition (*enter any other evidence*) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1913.

No. 12.—*Order for winding up, subject to supervision.*

(Secs. 221 and 222 of the Act.)

[*For general heading, see rule* 1.]

Upon the petition, &c., this Court doth order that the voluntary winding of the said company be conti-

nued, but subject to the supervision of the Court; and any of the proceedings under the said voluntary winding up may be adopted as this Court shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to a Judge of this Court in Chambers as there may be occasion.

No. 13.—*Advertisement of order to wind up.*

(RULE 29.)

[*For general heading, see rule* 1.]

By an order made by the High Court of Judicature at Bombay (*or* District Court of) in the above matter, dated the day of 19 , on the petition of the abovenamed company (*or* A. B. of): It was ordered that, &c., *as in order.*

C. and D. of, &c.,
Attorneys for the said petitioner.

No. 14.—*Advertisement of time and place fixed for the appointment of official liquidator.*

(RULE 32.)

[*For general heading, see rule* 1.]

Notice is hereby given that the Honourable Mr. Justice (*or* the Judge of the District Court of) has fixed the day of 19 , at o'clock in the noon, at his Chambers in the Court House of the High Court at Bombay (*or* at the District Court House at) at the time and place for the appointment of an official liquidator of the abovenamed company.

G. H.,
Prothonotary
(*or as the case may be*).

No. 15.—*Proposal for appointment of official liquidator (and sureties) where form No. 14 has been issued.*

[*For general heading, see rule* 1.]

We, the undersigned contributories of the abovenamed company for the number of shares placed opposite our respective names, hereby propose Mr R. P. H. of, &c., public accountant to be the official liquidator of the said company (and H N. of, &c., and J. P. of, &c., to be his sureties).

Name	Address.	Number of shares held.

No 16 – *Recognizance of the official liquidator and sureties* (Rule 33.)

[*For general heading, see rule* 1.]

The Honourable Mr. Justice (*or* the Judge of the District Court) has approved of and allowed this recognizance G. H., Prothonotary (*or as the case may be*)

R. P H. of, &c., W B of, &c., and T. P. of, &c., in the High Court of Judicature at Bombay (*or* District Court of) personally appearing, do acknowledge themselves, and every of them doth acknowledge himself to owe the respective sums of money set opposite to their respective names in the schedule hereto to be paid to the Honourable Mr. Justice , a Judge of the said High Court (*or* to , Esquire, Judge of the said District Court of), his successors in office or assigns; and in default of payment of the said respective sums, the said R. P. H., W. B and T. P. are willing and do agree each for himself, his heirs, executors and administrators, by these presents,

that the said sums shall be levied, recovered and received of and from them and every of them, and of and from them and every of them and of and from all and singular the manors, messuages, lands, tenements and hereditaments, goods and chattels of them and every of them wheresoever the same shall be found. Witness the day of 19 . Whereas in the matter of, &c. (*take title from order to wind up*), the High Court of Judicature at Bombay, (*or* District Court of), has by an order dated the day of 19 , appointed the said R. P. H., official liquidator of the said company, and has thereby directed him to give security to be approved of by the said Court, or (*in case the security precedes the order appointing*) has approved of the said R. P. H. as a proper person to be appointed official liquidator of the said company (upon his giving security). And whereas the said Judge has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts set opposite to their respective names in the schedule hereto and has also approved of the above written recognizance, with the under-written condition as a proper security to be entered into by the said R P. H., W. B. and T. P., pursuant to the said order and (*or* pursuant to) the general order of the said Court in that behalf; and in testimony of such approbation the Honourable , one of the Judges of the said Court (*or in a District Court*) , Esq. (the Judge of the said Court), hath signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such that if the said R. P. H., his executors or administrators or any of them do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as official liquidator of the said company at such periods and in such manner as the said Court shall appoint, and pay the same as the said Court hath (by the said order) directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

The schedule above referred to

R. P. H.	thousand rupees.
W. B.	thousand rupees.
T. P.	thousand rupees.

Taken and acknowledged by the abovenamed R. P. H. &c., &c.

No. 17.--*Affidavit of sureties.*

(RULE 33.)

[*For general heading, see rule* 1.]

We, W. B. of, &c., and T. P. of, &c , severally make oath and say (*or* solemnly affirm) as follows :—

1. I, the said W. B. for myself, say that I am worth the sum of rupees   of lawful money of British India, over and above what is sufficient for the payment of all my just debts and liabilities.

2 And I, the said T. P. for myself, say that I am worth the sum of rupees   of, &c. (*as above*).

Sworn, &c

(or solemnly affirmed.)

No 18.--*Order appointing an official liquidator.*

(RULES 33 AND 34.)

[*For general heading, see rule* 1.]

The   day of   19 .

Upon the application, &c., and upon reading, &c., the Court doth hereby appoint R. P. H. of, &c , official liquidator of the abovenamed company. [*If security has not been given and has not been dispensed with add*, and it is ordered that the said R. P. H. do, on or before the   day of   next, give security to be approved of by the Court.] And it is ordered that the said R. P. H. on the   day of   and   , day of   19 and the same days in each succeeding year, file his accounts in the office of the Prothonotary (or office) of the said Court (*or* in the case of a District Court in the District Court at   ) and it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of Bombay (*or* the branch nearest to the Court in which the matter is pending, or in the case of a District Court into the District Court at   ) to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. (*In case two or more official liquidators are appointed add*) And the said Court doth declare that the following acts required or authorized by the above Act to

be done by the official liquidators may be done by either (*or any one, or two*) of the official liquidators hereby appointed, that is to say (*describe the acts*), and all other acts so required or authorized to be done by both (*or all*) the official liquidators hereby appointed. And it is ordered that an office copy of this order be lodged at the Bank of Bombay or branch thereof as aforesaid

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No. 19.—*Order appointing a provisional official liquidator.*
(RULES 33, 34, 38 and 83.)

[*For general heading, see rule* 1.]

The day of 19 .

Upon the application, &c. and upon reading, &c., the Court doth hereby appoint R. P H of, &c., provisionally, official liquidator of the abovenamed company (*If security dispensed with add,* without security; *or if security is to be given add direction as to security account and payment into the Bank as in form No.* 18.) And the said Court doth hereby limit and restrict the powers of the said R P. H. as such provisional official liquidator to the following acts, that is to say (*describe the acts which the provisional official liquidator is to be authorised to do.*)

No. 20.—*Sanction of appointment of attorney to official liquidator and appointment.*

(See section 181 of the Act.)

[*For general heading, see rule* 1.]

The Court sanctions the official liquidator appointing an attorney (or vakeel) to assist him in the performance of his duties.

L. H.

I hereby appoint to be my attorney in this matter, dated this day of 19 .

R. P. H.,
Official Liquidator.

No. 21.—*Order for payment of money or delivery of books, &c., to the official liquidator.*

(See sections 185 and 187 of the Act.)

[*For general heading, see rule* 1.]

Upon the application of, &c., and on reading, &c., it is ordered that A. B. of, &c., do, within four days after service hereof, pay to (*or* deliver, convey, surrender or transfer to or into the hands of) R. P. H., the official liquidator of the said company, at the office of the said R. P. H., situate at, &c., the sum of rupees , being the amount of debt appearing to be due from the said A. B. on his account with the said company (*or* any sum or balance, books, papers, estate or effects specifying the property) now being in the hands of the said A. B. and to which the said company is *primâ facie* entitled (*or otherwise as the case may be*)

No. 22. *Direction to open account at the Bank of Bombay.*

(RULES 31, 59, 64, 69 and 70.)

[*For general heading, see rule* 1.]

To the Secretary and Treasurer of the Bank of Bombay (or the Agent of the branch of the Bank of Bombay at

SIR,

An order, dated the day of 19 , having been made in the above matter by the High Court of Judicature at Bombay (or District Court of) for winding up the abovenamed company by the Court, under the provisions of the Indian Companies Act 1913, and R. P. H., of
having by order, dated the day of 19 , been appointed the official liquidator of the said company, you are requested to open an account, to be entitled "The account of the official liquidator of the company," in your books pursuant to the said Act. All cheques drawn upon such account must be signed by the official liquidator, and by ,

who has been appointed by the Judge, whose signatures are attached hereto.

I am, Gentleman,
Your most obedient Servant,
G. H.

Signature,
R. P. H., Official Liquidator.
G. W.

In the case of winding up proceedings being carried on in a District Court, the liquidator of the company should present a similar application to the Judge as the above, *mutatis mutandis*, for leave to open such an account in the District Court.

No. 23.—*Advertisement of appointment of official liquidator.*

(RULE 37.)

[*For general heading, see rule* 1.]

The Honourable Mr. Justice (or the District Judge of) has, by an order, dated the day of 19 , appointed R. P. H. of to be official liquidator of the abovenamed company.

Dated this day of 19 .

G. H.

No. 24.—*Advertisement for creditors.*

(RULE 45.)

[*For general heading, see rule* 1.]

The creditors of the abovenamed company are required on or before the day of 19 to send their names and addresses and the particulars of their debts or claims, and the names and addresses of their attorney (if any) to R. P. H. of the official liquidator of the said company, and if so required by notice * in writing from the official liquidator, or in person or by their attorneys to come in and prove their said debts or claims, at such

* For form of notice, see form No. 28.

time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts proved.

The day of 19 , at o'clock in the noon, at the said , is appointed for hearing and adjudicating upon the debts and claims

Dated this day of 19 .

G. H.

No. 25. *Affidavit of official liquidator as to debts and claims.*

(RULE 47.)

[*For general heading, see rule* 1.]

I, R. P. H. of, &c., the official liquidator of the above-named company, make oath and say (*or* solemnly affirm) as follows :—

1. I have, in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims, the particulars of which have been sent in to me by persons making claim upon or claiming to be creditors of the said company pursuant to the advertisement issued in that behalf, dated the day of 19 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company, in order to ascertain so far as I am able, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence, and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims; and I believe that such amounts, respectively, are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (*or* solemnly affirmed), &c.

No 26.—*Exhibit referred to in affidavit in Form No.* 25.

A.

[*For general heading, see rule* 1.]

This paper writing, marked A, was produced and shown to R. P. H., and is the same as is referred to in his affidavit sworn (*or* solemn affirmation made) before me this day of 19 .

W. B., &c.

List of debts and claims of which the particulars have been sent in to the official liquidator

First part.

Debts and claims which ought to be allowed without further evidence

Serial Number.	Names of creditors.	Addresses and descriptions.	Particulars of debts or claims.	Amount claimed	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				Rs. A. P.	Rs. A. P.	

Second part.

Debts and claims which ought to be proved by the creditors.

Serial Number.	Names of creditors.	Addresses and descriptions.	Particulars of debts or claims.	Amount claimed.
				Rs. A. P.

No. 27.—*Notice to creditors of allowance of debt.*

(Rule 48.)

[*For general heading, see rule* 1.]

(Place and date.)

Sir,

The debt claimed by you in this matter has been allowed by the Judge at the sum of Rs. (*if part only allowed add*) if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., *as in the next form.*

I am, &c.,
R. P. H., Official Liquidator.

To Mr. P. R.

No. 28.—*Notice to creditors to come in and prove their debts.*

(Rule 49.)

[*For general heading, see rule* 1.]

(Place and date.)

Sir,

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me on or before the day of next, and you are to attend in person or by your attorney (*or* vakil) on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of . 19

R. P. H., Official Liquidator.

To Mr. P. R.

No. 29.—*Affidavit of creditor in proof of debt.*

(Rule 49.)

[*For general heading, see rule* 1.]

I, S. T. of &c., make oath (*or* solemnly affirm) and say as follows :—

1. The above-named company was on the day of 19 , the date of the order for winding up

the same, and still is, justly and truly indebted to me in the sum of rupees for, &c. (*Describe shortly the nature of the debt and exhibit any security for it, and in case of a trade debt exhibit vouchers, and verify the reasonableness of the charges, as in proving a debt in a suit*).

2. I have not, nor hath nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of rupees or any part thereof, or any security or satisfaction for the same or any part thereof. (*If any security add*) except the said (*describe the security*) hereinbefore mentioned or referred to Sworn (*or* solemnly affirmed, &c.).

No. 30.—*Settlement by the Judge of debts and claims.*

(RULE 53.)

[*For general heading, see rule* 1.]

The debts and claims which have been allowed are set forth in the first schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to Rs .

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to [*the present date*] date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been brought in by the persons therein named and have been disallowed

The first schedule above referred to.

First part.

Debts and claims which carry interest

No	Names of creditors.	Addresses and descriptions.	Particulars of debts.	Total amount.
1	J. L.	Of (address)	On bills of exchange dated, &c.	Rs. A. P.
		Principal	Rs.	
		Interest at per cent. per annum from 19 to the date of this certificate	Rs.	
		Costs of proof.		

Second part.

Debts and claims which do not carry interest.

No	Names of creditors.	Addresses and descriptions.	Particulars of debts		Interest on principal.	Total due.
				Rs. A. P.	Rs. A. P.	Rs. A. P.
			Goods sold.	30 0 0 2 0 0		
40	W. R.	Of (address) Principal.				
		Cost of proof.	Total Rs. *Add*—Total		2 0 0	54 0 0
			first part Total first and second parts ..			

The second schedule above referred to.

No.	Names of creditors.	Addresses and descriptions.	Particulars of claims.	Amount claimed
				Rs. A. P.

Dated this day of 19 .

(Signature of the Judge or District Judge.)

No. 31.—*Notice to creditor to attend to receive debt.*

(Rule 53.)

[*For general heading, see rule 1.*]

Sir,

Upon application at my office, No. Street, Bombay, on or after the instant, between the hours of

ten and four o'clock, you may receive a cheque for the amount of your debt allowed in this matter as under :—

Principal	..	..	.. Rs
Interest	..	..	,,
Costs of proof		..	.. ,,
		TOTAL	Rs

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 19 .

R P H., Official Liquidator.

SIR,

Please to deliver to W. R. the cheque for Rs referred to in the above letter as payable to me

S T, Creditor

To

Mr. R. P. H.,

Official Liquidator of the company.

No. 32.—*Affidavit in support of list of contributories.*

(RULE 54.)

[*For general heading, see rule* 1.]

I, R P. H. of &c., the official liquidator of the above-named company, make oath and say (or solemnly affirm) as follows :—

1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares (*or* extent of interest) to be attributed to each ; and such is, to the best of my knowledge, information and belief, a true and accurate list of contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list, marked A, distinguished the persons who are contributories in their own right.

3 I have in the second part of the said list, marked A, distinguished the persons who are contributories as being representatives of, or being liable for the debts of, others.

Sworn (*or* solemnly affirmed), &c

No. 33.—*List of contributories referred to in form No. 32.*

A.

[*For general heading, see rule* 1.]

This list of contributories, marked A, was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit. Sworn (*or* solemn affirmation made) before me this day of 19 .

W. B., &c.

First part

Contributories in their own right.

Serial No	Name	Address.	Description.	In what character included.	Number of shares (or extent of interest).

Second part.

Contributories as being representatives of, or liable for the debts of, others.

Serial No.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

No. 34.—*Notice to contributories of appointment to settle list of contributories.*

(RULE 55.)

[*For general heading, see rule* 1.]

The Honourable Mr. Justice (*or as the case may be*) has appointed the day of 19 , at of the clock in the noon at , to settle the list of the contributories of the above-named company, made out and filed in Court by the official liquidator of the said company, and you are included in such list in the character, and for the number of shares (*or* extent of interest) stated below, and if no sufficient cause is shown by you to the contrary at the time and place aforesaid the list will be settled by the said Judge, including you therein.

Dated this day of 19

R. P. H., Official Liquidator.

To Mr. A B, and to Mr. C. D. his attorney

No. on list.	Name	Address	Description	In what character included.	Number of shares (or extent of interest).

No. 35.—*Affidavit of service of notice.*

(RULE 55)

[*For general heading, see rule* 1.]

I, W. S. of &c., clerk to Messrs. C. and D. of &c., the attorneys of the official liquidator of the above-named company, make oath (*or* solemnly affirm) and say as follows :—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A, contain

a true copy of the list of contributories of the said company, made out and filed in Court by the said official liquidator, on the day of 19 , and now on the file of proceedings of the said company, as I know from having, on the day of 19 , examined and compared the said schedule with the said list; and I have in the seventh column of the said schedule, marked A, set forth the names and addresses of the attorneys who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked B, upon each of the said respective persons whose names, addresses and descriptions appear in the second, third and fourth columns of the said schedule, marked A, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares (*or* extent of interest) of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule, marked A.

3. I served the said respective copies of the said notice by putting such copies respectively, duly addressed to such persons respectively or their attorneys, according to their respective names, and addresses appearing in the said schedule, and marked A, and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving house No. , in Street, Bombay (*or as the case may be*) between the hours of and of the o'clock in the of the said day of . Sworn (*or* solemnly affirmed), &c.

No. 36.—*The Schedule referred to in form No.* 35.

A.

[*For general heading, see rule* 1.]

This schedule, marked A, was produced and shown to W. S., and is the same schedule as is referred to in his affidavit. Sworn (*or* solemnly affirmed) before me this day of 19 .

W. B., &c.

No. on list.	Name.	Address.	Description	In what character included.	Number of shares (or extent of interest).	Names and addresses of attorneys who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S. to which this schedule is an exhibit.
1	2	3	4	5	6	7

No. 37.—*Supplemental list of contributories, and affidavit in support.*

(Rule 54.)

[*For general heading, see rule* 1]

I, R. P. H. of &c., the official liquidator of the above-named company, make oath (*or* solemnly affirm) and say as follows :—

1. Since filing in Court the list of the contributories in the matter on the day of 19 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are or have been holders of shares (*or* members) of the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list, marked B, contains the names of such persons, together with their respective

addresses, and the number of shares (*or* extent of interest) to be attributed to each; and such list is, to the best of my knowledge, information and belief, true and accurate.

3. I have, in the first part of the said list, marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list, marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable for the debts of, others. Sworn (*or* solemnly affirmed), &c.

No. 38.—*Supplemental list of contributories referred to in form No.* 37.

B.

[*For general heading, see rule* 1.]

This supplemental list of contributories, marked B, was produced and shown to R. P. H. and is the same supplemental list of contributories as is referred to in his affidavit. Sworn (*or* solemn affirmation made) before me, this day of 19 .

W. B., &c.

NOTE.—Supplemental list is to be made out in the same form as the original list. Form No. 33.

No. 39.—*Settlement by the Judge of the list of contributories.*

(RULE 56.)

[*For general heading, see rule* 1.]

The result of the settlement of the list of the contributories of the above-named company, made out and filed in Court by the official liquidator of the said company, on the day of 19 , pursuant to the above Act and the General Order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows :—

1. The several persons, whose names are set forth in the second column of the first schedule hereto, have been

included in the said list of contributories as contributories of the said company in respect of the number of shares (*or* extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the first list as are contributories in their own right. I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representative of, or being liable to the debts of, others.

2. The several persons whose names are set forth in the second column of the said schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth, opposite the names of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

The first schedule above referred to.

First part.

Contributories in their own right.

Serial No. in list.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).	Date when included in the list.

Second part

Contributories as being representatives of, or liable to the debts of, others.

Serial No. in list.	Name.	Address.	Description.	In what character included	Number of shares (or extent of interest).	Date when included in the list.

The second schedule above referred to.

Serial No in list.	Name.	Address.	Description.	In what character proposed to be included.	Number of share (or extent of interest).	Date when excluded from the list.

Dated this day of 19 .

(*Signature of the Judge or District Judge.*)

No 40.—*Order on application to vary list.*

(RULE 56.)

[*For general heading, see rule* 1.]

Upon the application of W. N. to review the list of contributories of the said company, in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom, and upon hearing advocates, &c., and upon reading, &c. : It is ordered that the name of the said W. N. be excluded from the said list of contributories (*or* the Court doth not think fit to make any order on the said application except that the said W. N. do pay to R. P. H., the official liquidator of the said company, his costs of this application, to be taxed by the Taxing Master in case the parties differ or in the case of a District Court the sum of Rs. for his costs of this application).

No. 41 —*Affidavit of official liquidator in support of proposal for call.*

(RULE 60.)

[*For general heading, see rule* 1.]

I, R. P. H. of &c., the official liquidator of the above-named company, make oath (*or* solemnly affirm) and say as follows :—

1. I have in the schedule now produced and shown to me, and marked with the letter A, set forth a statement

showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding up the affairs thereof, which several amounts form in the aggregate the sum of Rs. or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of Rs. and no more. There are no other assets belonging to the said company, except the amounts due from certain of the said contributories of the said company, and to the best of my information and belief it will be impossible to realize in respect of the said amounts more than the sum of Rs. or thereabouts.

3. It appears by the certificate of the Honourable Mr. Justice (*or as the case may be*) dated the day of 19 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges and expenses of and incidental to the winding up the affairs thereof, I believe the sum of Rs will be required, in addition to the amount to the assets of the said company mentioned in schedule A and the said sum of Rs. .

5. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required, as before mentioned, it is necessary that a call of Rs. per share should be made.

Sworn (*or* solemnly affirmed), &c.

No. 42.—*Summons for intended call.*

(Rule 60.)

[*For general heading, see rule* 1.]

Let all parties concerned attend at on day the day of 19 at of the clock in the noon, on the hearing of an application on the part of the official liquidator of the abovenamed com-

pany, that a call to the amount of Rs. per share may be made on all the contributories (*or if upon any particular class specify the same*) of the said company.

This summon was taken out by A. B. of , attorney for the said official liquidator.

To Mr. A. B. of, &c., a contributory of the said company proposed to be included in the said call.

No. 43.—*Advertisement of intended call.*

(RULE 60.)

[*For general heading, see rule* 1.]

By direction of the notice is hereby given that the said Judge has appointed the day of 19 , at o'clock in the noon, at to make a call on all the contributories of the said company, *or as the case may be*, and that the said call shall be for Rs. per share. All persons interested are entitled to attend at such day, hour, and place to offer objections to such call.

Dated this day of 19 .

No. 44.—*General order for a call.*

(RULE 63.)

[*For general heading, see rule* 1.]

Upon the application of the official liquidator of the abovenamed company, and upon reading two orders, dated the day of 19 , and the day of 19 , the certificate of the dated the day of 19 , an affidavit of the said official liquidator filed 19 , and the exhibit marked A therein referred to, and an affidavit of filed 19 : It is ordered that a call of Rs. per share be made on all the contributories of the said company (*or as the case may be*). And it is ordered that each such contributory do, on or before the day of 19 , pay into the Bank of Bombay (*or* the branch of the Bank of Bombay, *or* in the case of District Court into the District

Court at), to the account of the official liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 45.—*Notice to be served with the general order for a call.*

(RULES 61 AND 63.)

[*For general heading, see rule* 1.]

The amount due from you, A. B., in respect of the call made by the above (*or* within) order, is the sum of Rs. , which sum is to be paid by you into the Bank of Bombay (*or* the Branch of the Bank of Bombay, *or* in the case of a District Court into the District Court at), to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent, but this notice and copy of order must be produced at the Bank or to the Court upon such payment, and the cashier of the Bank or the Nazir of the said Court will, upon receiving the same, deliver to you a certificate of the payment in number signed by the said cashier or Judge. In order to prevent proceedings being taken against you for non-payment, you must immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me, as the official liquidator of the said company, at my office, No. Street, inside the Fort, Bombay. Dated this day of 19 .

R. P. H., Official Liquidator.

To Mr. A. B.

No. 46.—*Affidavit in support of application for order for payment of call due from contributory.*

(RULE 62.)

[*For general heading, see rule* 1.]

I, R. P. H. of &c., the official liquidator of the above-named company, make oath (*or* solemnly affirm) and say as follows :—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed marked A, have paid, or caused to be paid, the respective

sums set opposite their respective names in the said schedule, which sums are the respective amounts now due from them respectively in respect of the calls of Rs. per share, in pursuance of the order of the Judge in that behalf. Dated the day of 19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call. Sworn (*or* solemnly affirmed), &c.

The Schedule above referred to.

Number on list	Name.	Address	Description	In what character included.	Amount due.

NOTE.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos 44 and 45) will be required.

No. 47.—*Order for payment of call due from a contributory.*

(RULE 62.)

[*For general heading, see rule* 1.]

Upon the application of the official liquidator of the abovenamed company, and upon reading the order, dated the day of 19 , an affidavit of filed the day of 19 , and an affidavit of the said official liquidator, filed the day of 19 , it is ordered that C. D. of &c. (*or* E. F. of &c., the legal personal representative of L. M., late of &c., deceased), one of the contributories of the said company (*or if against several contributories* the several persons named in the second column of the schedule to this order being respectively contributories of the said company) do, on or before the day of or within four days after service of this order, pay into the Bank of Bombay

(*or* the branch of the Bank of Bombay, *or* in the case of a District Court into the District Court at), to the account of the official liquidator of the Company (*or* to A. B., the official liquidator of the said company at his office, No. street, in the) the sum of Rs. (*If against legal personal representative, add* out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration if the said E. F. has in his hands so much to be administered; *or if against several contributories* the several sums of money set opposite to their respective names in the sixth column of the schedule hereto) such sum (*or* sums) being the amount (*or* amounts) due from the said C. D. (or L. M.) or the said several persons respectively in respect of the call of Rs. per share made by the said order dated the day of 19 .

The Schedule referred to in the foregoing order.

Number on list.	Name.	Address.	Description	In what character included.	Amount due.

No. 48.—*Notice to be endorsed on or served with every order directing payment of money into the Bank of Bombay or into Court.*

(RULE 67.)

You can make the payment directed by the within (*or* above) order to the Bank of Bombay (*or* the branch of the Bank of Bombay, *or* in the case of a District Court into the District Court at ,) in person, &c. (*as in form* No. 45.)

R. P. H., Official Liquidator.

No. 49.—*Certificate of payment of money into the Bank of Bombay or into Court.*

(RULE 67.)

No. day of 19 .

I hereby certify that C. D. of &c., has this day paid into the Bank of Bombay or into Court the sum of to be placed to the credit of the official liquidator of the company, pursuant to an order dated the day of 19 .

For the Bank of Bombay, Rs. .

H. M., Cashier.

or

Nazir District Court.

(*As the case may be.*)

No. 50.—*Affidavit of service of order for payment of call.*

(RULE 62.)

[*For general heading, see rule* 1.]

I, J. B. of &c., make oath (*or* solemnly affirm) and say as follows :—

1. I did, on the day of 19 , personally serve G. F., of in the of , &c , with an order made in this matter by , dated the day of 19 , which is hereto annexed and marked A by delivering to and leaving with the said G. F. at , in the , a true copy of the said order together with a translation thereof in the language, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

Sworn (*or* solemnly affirmed), &c.

No. 51.—*Affidavit of non-payment of money by order directed to be paid into the Bank of Bombay or into Court.*

(RULE 68.)

[*For general heading, see rule* 1.]

I, R. P. H. of &c., the official liquidator of the abovenamed company, make oath and say as follows :—

1. G. S., the person named in an order made in the matter by the Honourable Mr. Justice (*or as the*

case may be), dated the day of 19 , has not paid into the Bank of Bombay (or in the case of a District Court into the District Court at) to the account of the official liquidator of the company, the whole or any part of the sum of Rs. as by the said order directed. Or (*in case of several parties*) :—

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have, respectively, been duly served with orders made in this matter by the Honourable Mr. Justice (*or as the case may be*) of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of Bombay (or in the case of a District Court into a District Court at) to the account of the official liquidator of the company, the whole or any part of the several sums of money set opposite to their respective names in the schedule hereunder written, as by the said order, respectively, directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said Bank (*or* at the said Court) that such payment (*or* payments) has (*or* have) not been made, and seen the certificate of payment in, numbered (*or* several certificates of payment in, the numbers whereof, respectively, are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates) furnished by me to the cashier of the said Bank (*or* Nazir of the said District Court at) for delivery to the said G. F. (*or* several persons, respectively) upon such payment (*or* payments) being made still in the hands of the cashier of the said Bank (*or* Nazir of the said District Court). No notice (*or* notices) of such payment (*or* payments) having been made has (*or* have) been given to me by the said G. F. (*or* several persons, respectively). Sworn (*or* solemnly affirmed), &c.

The schedule above referred to.

Name.	Address.	Description.	Amount.	Date of balance order.	Number of certificate.

No. 52.—*Request to invest cash in Government promissory notes.*

(RULE 71.)

[*For general heading, see rule* 1.]

To the Secretary and Treasurer of the Bank of Bombay.

Sir,

It appearing that the sum of Rs. cash is standing to the credit of the account of the official liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. . part thereof, in the purchase of per cent. Government Promissory Loan Notes in the name of R. P. H. of, &c., the official liquidator of the said company, and to deposit such Government notes in the Bank of Bombay (*or* the branch thereof, or in the case of a District Court into the District Court at in the name and on behalf of the official liquidator. The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said company, and countersigned by a Judge of the High Court of Judicature of Bombay (*or* by the Judge of the District Court of , *or* under an order to be made by the said Judge).

Dated this day of 19 .

I am, Sir,

Your most obedient Servant,

R. P. H., Official Liquidator.

G. H.

(Conntersigned.)

No. 53.—*Request to the Court to sanction the investment of cash in Government promissory notes.*

(RULE 71.)

[*For general heading, see rule* 1.]

or To the Judge of the District Court at

Sir,

It appearing that the sum of Rs. cash is standing in the said Court to the credit of the account of myself the official liquidator of the abovenamed company, you are

hereby requested to authorise me to invest the sum of Rs. part thereof in the purchase of per cent. Government Promissory Loan Notes in my name as such official liquidator and to deposit such Government notes in the said Court in my name and on my behalf as such official liquidator. The said notes are not to be sold, transferred, or otherwise dealt with except upon a direction for that purpose signed by the official liquidator of the said company and countersigned by the Judge of your said Court.

Dated the day of 19

I am, Sir,
Your most obedient Servant,
R. P. H., Official Liquidator.

No. 54.—*Notice (or advertisement) of meeting of creditors or contributories.*

(RULE 73.)

[*For general heading, see rule* 1.]

Notice is hereby given that the High Court of Judicature at Bombay (*or* the District Court of) has directed a meeting of the creditors (*or* contributories) of the above-named company to be summoned pursuant to the above Act, for the purpose of ascertaining their wishes as to (*state the object for which meeting called, unless notice is by advertisement, in which case say,* certain matters relating to the winding up of the said company), and that such meeting will be held on day the day of 19 , at o'clock in the noon at in the , at which time and place all the creditors (*or* contributories) of the said company are requested to attend. (The said Court has appointed H. T. of &c., to act as Chairman of such meeting.) Dated this day of 19 .

R. P. H., Official Liquidator.

NOTE.—If summoned otherwise than by direction of the Court, omit the words underlined.

No. 55.—*Memorandum of appointment of a person to act as Chairman at meeting of creditors or contributories.*

(Rule 74.)

[*For general heading, see rule* 1.]

Mr. H. T. of &c., one of the creditors (*or* contributories) of the abovenamed company is appointed to act as chairman of a meeting of the creditors (*or* contributories) of the said company, summoned by direction of the High Court of Judicature at Bombay (or the District Court of) pursuant to the above Act, to be held on the day of 19 , at o'clock in the noon, at and to report the result of such meeting to the said Court.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors (*or* contributories) of the said company as to (*state the object for which meeting called*), and at such meeting the votes of the creditors (*or* contributories) may be given either personally or by proxy.

Dated this day of 19 .

No. 56.—*Appointment of proxy to vote at meeting of creditors or contributories.*

(Rule 75.)

[*For general heading, see rule* 1.]

I, W. S. of , in the being a creditor (*or* contributory) of the abovenamed company, hereby appoint of , as my proxy to vote for me, and on my behalf at the meeting of the creditors (or contributories) of the said company, summoned by the official liquidator (at the direction of the High Court of Judicature at Bombay) to be held on the day of , and at any adjournment thereof . As witness my hand this day of 19 .

Signed by the said W. S. in the presence of J. M. of &c. } W. S.

No. 57.—*Chairman's report of result of meeting of creditors or contributories.*

(RULES 73, 74 AND 75.)

[*For general heading, see rule* 1.]

I, H. T., the person appointed by the High Court of Judicature at Bombay (*or* District Court of) to act as chairman of a meeting of the creditors (*or* contributories) of the abovenamed company, summoned by advertisement (*or* notice), dated the day of 19 , and held on the day of 19 , at , do hereby report to the said Court the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy, by creditors, to whom debts against the said company have been allowed, amounting in the whole to the value of Rs. (*or* by contributories holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned.)

The question submitted to the said meeting was whether the creditors (*or* contributories) of the said company approved of the proposal of the official liquidator of the said company that &c., (*as the case may be*), and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into effect, or the result of the voting upon such question was as follows :—

The undermentioned creditors (or contributories) voted in favour of the said proposal being adopted and carried into effect—

Name of creditor (or contributory)	Address.	Value of debt (or number of shares.)	Number of votes conferred on each contributory by the regulations of the company

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect—

Name of creditor (or contributory).	Address	Value of debt (or number of shares)	Number of votes conferred on each contributory by the regulations of the company.

Dated this day of 19 .

(Signed) H. T.,
Chairman.

No. 58.—*Memorandum of sanction of Judge to accepting bill of exchange, &c.*

(RULE 76.)

[*For general heading, see rule* 1.]

The Judge has sanctioned the acceptance of this bill of exchange by the official liquidator on behalf of the said company.

(*Signature.*)

No. 59.—*Memorandum of agreement of compromise with a contributory.*

(RULE 77.)

[*For general heading, see rule* 1.]

Memorandum of agreement entered into this day of 19 , between R. P. H. of &c., the official liquidator of the abovenamed company, of the one part, and S. B. of &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares in the said company; and whereas by an order made by , dated the day of 19 , a call of Rs. per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of Rs. in respect of the said call; and whereas the said S. B. has proposed to pay to the said official liquidator the sum of Rs. by way of compromise, and in satisfaction and discharge of the said sum of Rs. , and of all liability whatsoever, as a contributory of the said company; and whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above Act, agreed to accept the same, subject to the sanction of the Court, and to the conditions and agreements hereinafter contained:—

Now it is hereby agreed by and between the said parties hereto:

1. That the said official liquidator shall, before the day of next. apply to a Judge of the said Court, at Chambers, to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Judge the said S. B. shall, within day next after such sanction, pay to the said official liquidator the said sum of Rs. , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said official liquidator on behalf of the said company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has or may have against the said company in respect of the said shares, or the distribution of the assets of the said company, otherwise howsoever.

3. That the said sum of Rs. , and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the company or the official liquidator thereof now has or may hereafter have

or be entitled to against the said S. B. in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into

5. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in all respects perform the same on his part the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof or, with the like sanction, to give notice to the said S. B. that he abandons this agreement. whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of Rs.   or so much thereof as shall then remain due and owing unpaid, as if this agreement had not been entered into.

Witness to the signatures of the said R. P. H. and S. B. { R. P. H., Official Liquidator.
S. B.

C. D. of &c.

No. 60.—*Memorandum of sanction of Judge to agreement of compromise.*

(Rule 77.)

[*For general heading, see rule* 1.]

The Judge has sanctioned this agreement of compromise.

(*Signature.*)

No. 61.—*Order or memorandum of the sanction of the Judge for certain acts to be done by official liquidator.*

(Rule 78.)

[*For general heading, see rule* 1.]

The Judge   doth hereby sanction (*or* has sanctioned) the following proceedings being taken (*or* acts being done) by the official liquidator of the abovenamed

company, namely (*state the proceedings to be taken or acts to be done as*) the bringing or instituting and prosecuting an action in the name and on behalf of the said company, against, or defending an action brought against the said company by K. M. of &c., to recover a debt or sum of Rs.   alleged to be due from (or to) the said K. M., to (*or from*) the said company, &c.

No. 61A.—*Appearance Book.*

(RULE 86.)

(*For general heading, see rule* 1.)

Appearance Book.

Date when appearance entered	Party's Name.	Whether creditor or contributor	If he appears in person, his address for service.	If he appears by an attorney, his attorney's name.	Attorney's address.	Amount of debt (or number of shares)

No. 62.—*Form of order transferring winding up proceedings from High Court to District Court.*

(RULE 90.)

[*For general heading, see rule* 1.]

It is hereby ordered that all the winding up proceedings in the above matter, together with all documents and papers thereto relating, and all moneys and securities standing therein to the credit of the official liquidator, be and they are

hereby transferred from the said High Court to the District Court at and the said District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Dated this day of 19 .

A. B. (Judge of High Court).

No 63.—*Form of order transferring winding up proceedings from one District Court to another*

(Rule 90.)

[*For general heading, see rule* 1.]

It is hereby ordered that all the winding up proceedings in the above matter, together with all documents and papers relating thereto, and all moneys and securities standing therein to the credit of the account of the official liquidator, be and they are hereby transferred from the District Court at to the District Court at and the said last-mentioned District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Dated this day of 19 .

A. B. (Judge of High Court).

No 64.—*Summons for persons to attend at Chambers to be examined.*

(See sec. 195 of the Act.)

[*For general heading, see rule* 1.]

A. B of &c. and E F. of &c., are hereby severally summoned to attend at on the day of 19 , at of the clock in the noon, to be examined on the part of the said official liquidator (*or* of W. D. of &c.) for the purpose of proceedings directed by the said Court to be taken before me in the above matter. And the said A. B. is hereby required to bring with him and produce at the time and place aforesaid, a certain indenture (*describe document*) and all other books, papers, deeds, writings, and other

documents in his custody or power in any wise relating to the abovenamed company.

Dated this day of 19 . This summons was taken out by Messrs. C. & D. of , attorneys for the official liquidator (*or* for the said W. D.).

No. 65.—*Declaration of the company being completely wound up, and of the official liquidator having passed his final account.*

(RULE 91.)

[*For general heading, see rule* 1.]

I hereby declare that R. P. H., the official liquidator of the abovenamed company, has passed his final account as such official liquidator, and that the balance of Rs. hereby found to be due to (*or* from) the said official liquidator has been paid in the manner directed by the order dated the day of 19 , and that the affairs of the said company have been completely wound up. Dated this day of 19 .

A. B., Judge.

No. 66.—*Order to dissolve the company.*

(RULE 92.)

[*For general heading, see rule* 1.]

Upon the application of the official liquidator of the abovenamed company, and upon reading an order dated the day of and the declaration of the Court dated the day of , whereby it appears that the affairs of the said company have been completely wound up, and that the balance of Rs. due from (*or* to) the official liquidator has been paid in manner directed by the said order. It is ordered that the said company be dissolved as from this day of 19 , and that the recognizance, dated the day of 19 , entered into by the said official liquidator, together with W. B. and S. P., his sureties, be vacated.

A. B.,
Prothonotary,
or A. B.,
District Judge.

No. 67.—*Notice by liquidator in voluntary winding up, of his appointment.*

(See sec. 208 of the Act and rule 94.)

[*For general heading, see rule* 1.]

To

The Registrar of Joint Stock Companies.

Take notice that by a resolution passed in general meeting of the abovenamed company on day the day of 19 in the matter of the voluntary winding up of the said Company, I, the undersigned, was appointed liquidator of the said company.

Dated this day of 19 .

(*Signature.*)
(*Address.*)

No. 68.—*Liquidator's Statement of Account.*

(Rule 95.)

[*For general heading, see rule* 1.]

REALISATIONS				DISBURSEMENTS			
Date	Of whom received.	Nature of assets realised	Amount	Date.	To whom paid.	Nature of Disbursements	Amount
		Brought forward	Rs. a. p.			Brought forward.	Rs. a. p.
	Carried over				Carried over ..		

NOTE.—No balance should be shown on this Account, but only the total realisations and disbursements, which should be carried forward to the next account.

Analysis of Balance.

		Rs. A. P.
Total realisaions	.. ..	
,, disbursements	.. ..	
Balance	..	

The balance is made up as follows :—

		Rs A. P.	
1.	Cash in hands of liquidator		..
2.	Total payments into Bank, including balance at date of commencement of winding up (*as per Bank Book*) ..		
	Total withdrawals from Bank ..		
	Balance at Bank		..
3.	Amount in Companies Liquidation Account		..
		Rs. A. P.	
4.	Amounts invested by liquidator ..		
	Less—Amount realised from same .		
	Balance		..
	Total balance as shown above Rs		..

NOTE.—Full details of Stocks purchased for investment and of realisation thereof should be given in a separate statement.

Note.—The liquidator should also state—

(1)	The amount of the estimated assets and liabilities at the date of the commencement of the winding up.	Assets (after deducting amounts charged to secured creditors and debenture-holders) Rs. Liabilities: Secured creditors .. ,, Debenture-holders .. ,, Unsecured creditors .. ,,
(2)	The total amount of the capital paid up at the date of the commencement of the winding up.	Paid up cash . Rs. Issued as paid up otherwise than for cash .. ,,
(3)	The general description and estimated value of outstanding assets (if any).	
(4)	The causes which delay the termination of the winding up.	
(5)	The period within which the winding up may probably be completed.	

No. 69.—*Affidavit verifying statement of liquidator's account.*

(RULE 95.)

[*For general heading, see rule* 1.]

I, of , the liquidator of the abovenamed company, make oath and say as follows :—

1. That *the account hereunto annexed and marked contains a full and true account of my receipts and payments in the winding up of the abovenamed company.* from the day of 19 , to the day of 19 , inclusive, *and that* I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said company, *other than and except the items mentioned and specified in the said account.*

2. I further say that the particulars given in the annexed Form 68, marked , with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at
this day of 19 .
Before me.

NOTE —If no receipts or payments, strike out the words in italics

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The second schedule.

Fees and charges to be allowed to attorneys.

(RULE 99.)

	Rs
For attending any summons or other application at the Judge's Chambers, per hour	10
Or where from the length of the attendance or the difficulty of the case the Judge shall think this fee an insufficient remuneration for services performed, such fee as the Judge may allow to the attorneys by a memorandum in writing expressly made for that purpose and signed by the Judge specifying distinctly the ground of such allowance	..
For notice and services where the service may be effected as provided by Rules	1
For other duties performed, such of the fees authorised by the rules and regulations of the High Court as to attorney's fees as are applicable.	

CHIEF COURT OF LOWER BURMA.

1. These Rules may be cited as "The Companies Rules, 1915." They shall come into operation on and from the 5th day of July, 1915.

2. In these Rules, except where the context requires or declares another meaning:

(*a*) "The Act" means the Indian Companies Act, VII of 1913, as modified by subsequent enactments.

(*b*) "Court" means and includes the Chief Court of Lower Burma or a District Court subordinate to that Court.

(*c*) "Judge" means and includes a Judge of the Chief Court of Lower Burma or a Judge of a District Court subordinate to that Court.

(*d*) "Deputy Registrar" means a Deputy Registrar of the Chief Court of Lower Burma.

(*e*) "The Bank of Bengal" includes a branch of that Bank nearest to the place of business of any company with reference to which proceedings are taken under the Act.

General Headings. 3. The following shall be used as general headings in all cases under these rules relating to companies in the Chief Court of Lower Burma and in the Courts subordinate thereto :—

A.—For proceedings before the Judge in Chambers or in Court :—

In the Chief Court of Lower Burma (or in the District Court of) [as the case may be].

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

B.—For all advertisements, notices and other proceedings not before the Judge in Chambers or in Court :—

In the matter of the Indian Companies Act, VII of 1913, and of the Company, Limited.

C.—In cases where it is required the words "and reduced" shall be added to the description of the company.

Presentation, etc., of petitions, etc.

4. In the Chief Court of Lower Burma all petitions shall be presented, applications made to, and proceedings taken under the direction of, the Judge who ordinarily disposes of Miscellaneous Proceedings for the time being or a Deputy Registrar. In the Mofussil of Lower Burma all petitions shall be presented, applications made to, and proceedings taken under the direction of, the Judge for the time being of the District Court within whose jurisdiction the principal office of the company may be situate.

Petitions to reduce capital. "And reduced" under section 57 of the Act.

5. Upon the presentation of a petition for an order confirming a special resolution for reducing the capital of a company in cases where, as provided by section 57 of the Act, the creditors of the company are not entitled to object to the proposed reduction, the words "and reduced" shall be used, unless an order has been obtained dispensing with these words. Such an order may be obtained, either on application *ex parte* before the presentation of the petition, or at the time when the petition is presented.

Practice in cases where creditors cannot object

6. In the cases mentioned in Rule 5, a certificate shall not be granted as is hereinafter provided by Rule 18, but the petition shall, if necessary, be answered and shall come on for hearing in the ordinary way. In all other cases the rules hereinafter provided with reference to petitions to reduce capital shall be followed.

Practice where creditors are entitled to object.

7. In cases in which the creditors are entitled to object to the proposed reduction, the petition shall not come on for hearing until after the expiration of 14 clear days from the filing of such certificate as is mentioned in the Rule 18 hereafter.

Proceedings after petition presented.

8. When any such petition as last aforesaid has been presented, application may be made *ex parte* for directions as to the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction, and the Judge, or a Deputy Registrar, may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to section 58 of the Act; and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the two following rules. The order upon such application may be in the Form No. 1 in the Schedule to these Rules (hereinafter in these Rules called the Schedule hereto), with such variations as the circumstances of the case may require.

Advertisement of petition.

9. Notice of the presentation of the petition shall be published at such times and in such newspapers in English and in the vernacular as the Judge or a Deputy Registrar shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed, as mentioned in Rule 8. Such notice may be in the Form No. 2 in the Schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to creditors.

10. The Company shall, within such time as the Judge shall direct, file in Court an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in Rule 8, and the amounts due to them respectively.

Form of affidavit.

11. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim which, if that date was the commencement of the winding up of the company, would be admissible in proof against the company except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the Form No. 3 in the Schedule hereto, with such variations as the circumstances of the case may require.

Inspection of list of creditors.

12. Copies of such list, containing the names and addresses of the creditors, and the total amount due to them, but omitting the amounts due to them, respectively, or (as the Judge or a Deputy Registrar shall think fit) complete copies of such list shall be kept at the registered office of the company and at the offices of their Advocates or Pleaders and agents (if any), and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee.

Notice to creditors.

13. The company shall, within 7 days after the filing of such affidavit, or such further time as the Judge or a Deputy Registrar may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the Judge or a Deputy Registrar) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim and the name and address

of his Advocate or Pleader (if any) to the Advocate or Pleader of the company; and such notice shall be sent through the post in a registered letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4 in the Schedule hereto, with such variations as the circumstances of the case may require: Provided that if any of the creditors of the company are residing out of British India, or if the names of any of the creditors are not known to the company, the Judge or a Deputy Registrar may direct notice to be given to them by advertisement in such papers and at such times as he may think proper.

Advertisement as to list of creditors.

14. Notice of the list of creditors shall, after the filing of the affidavit mentioned in Rule 10, be published at such times and in such newspapers as the Judge or a Deputy Registrar shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of the creditors may be inspected and the time within which creditors of the company, whose names are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their Advocates or Pleaders (if any) to the Advocate or Pleader of the company; and such notice may be in the Form No. 5 set forth in the Schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to result of Rules 13 and 14.

15. The company shall, within such time as the Judge or a Deputy Registrar shall direct, file in Court an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in the above Rules 13 and 14, required to be sent in, stating the result of such notices, respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices, respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which, if any, of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the Form No. 6 in the Schedule hereto, with such variations as the circumstances of the case may require.

Proceedings where claim not admitted.

16. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim, the company shall, if the Judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than 14 clear days after such notice, and being the time appointed by the Judge or a Deputy Registrar for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in Rule 13 above, and may be in the Form No. 7 in the Schedule hereto, with such variations as the circumstances of the case may require.

Cost of proof.

17. Such creditors as come in to prove their debts or claims in pursuance of such notice as is mentioned in Rule 16 of these rules shall be allowed their costs of proof against the company and such costs shall be added to their debt; or the said creditors may be answerable for costs in the event of their proof not being established.

Certificate by the Judge as to creditors.

18. The result of the settlement of the list of creditors shall be stated in a certificate which shall be signed by the Judge or a Deputy Registrar and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication, in manner provided by section 59 of the Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented *in writing* to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by the said section 59, and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented *in writing* to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

19. After the expiration of 8 clear days from the filing of such last-mentioned certificate the petition shall be set down for hearing in the ordinary course upon a request in writing addressed to the Judge or a Deputy Registrar by the petitioner or his Advocate or Pleader to have the petition set down for hearing. **Petition to come on for hearing.**

20. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers in English and the vernacular, as the Judge or a Deputy Registrar shall direct. Such notices may be in the Form No. 8 in the Schedule hereto, with such variations as the circumstances of the case may require. **Advertisement of hearing.**

21. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by section 59 of the Act, and who has not before the hearing signed a consent to the proposed reduction of capital, may, if he think fit, upon giving 2 clear days' notice to the Advocate or Pleader of the company of his intention so to do, appear at the hearing of the petition and oppose the application. **Who may appear.**

22. When a creditor who appears at the hearing under Rule 21 is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of whose debt or claim has not been inquired into and adjudicated upon under section 59 of the Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing, under the last preceding rule, shall be entitled to the cost of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed. **Costs of appearance.**

23. When the petition comes on to be heard, the Judge may, if he shall so think fit, give such directions as may seem proper with reference to the securing, in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Judge shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims. **Directions at hearing.**

24. Where the Judge makes an order confirming a reduction, such order shall give directions in what manner and in what newspapers, in English and the vernacular, **Order confirming reduction.**

notice of the registration of the order and of such minute as is mentioned in section 61 of the Act is to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in section 57 of the Act.

Publication of reasons for reduction, etc.

25. If the Judge should think fit to require the company to publish the reasons for the reduction of its capital, or any other information with regard thereto, or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and the vernacular, as the Judge or a Deputy Registrar shall think proper.

Petition to wind up company. Advertisement of petition.

26. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be advertised 14 clear days before the hearing as follows:—

(1) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is, or was, situate within the Rangoon Town District once in the *Burma Gazette* and once at least in two English Daily Newspapers or Advertisers and two Native Newspapers published in Rangoon.

(2) In the case of any other company, once in the *Burma Gazette*, and once at least in two local Newspapers or (if there should be none such) in two Newspapers circulating in the district where such registered office or principal or last known principal place of business, as the case may be, of such company is or was situate, and also by proclamation affixed to the walls of the Court-house.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his Advocate or Pleader (if any) (Form No. 9).

Service of petition.

27. Every such petition shall, unless presented by the company, be served at the registered office (if any) of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Judge or a Deputy Registrar may direct; and every petition for the winding up of a company subject to the super-

vision of the Court shall also be served upon the Liquidator (if any) appointed for the purpose of winding up the affairs of the company. So also every petition for the compulsory winding up of a company shall be served upon the Liquidator (if any) who may have been appointed to act in a voluntary winding up, or in a winding up under supervision, as the case may be.

Affidavit verifying petition. 28. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 10 in the Schedule hereto—such affidavit shall be made by the petitioner or by one of the petitioners if more than one, or in case the petition is presented by the company, by some director secretary, or other principal officer thereof, and shall be made and filed within 4 days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition. When the petition is presented by a corporate body, other than the company itself, the affidavit shall be made by some director, secretary, or other principal officer of such corporate body: Provided that if the petitioner is by reason of absence or for other good cause unable to verify such petition the same may be verified by any person duly authorized by him in that behalf or deemed by the Court competent to verify the same.

Copies of petition to be supplied. 29. Every contributory or creditor of the company shall be entitled to be furnished by the Advocate or Pleader to the petitioner with a copy of the petition within 24 hours after requiring the same, on paying at the rate of eight annas per folio of 90 words for such copy.

Petition not to be dismissed if any creditor desires to take advantage of it. 30. When a petition to wind up has been presented, the petitioner shall not be entitled to have it dismissed, if any creditor appear and prove his debt and is desirous of taking advantage of the petition.

Order to wind up company. Advertisement and service of petition. 31. Every order for the winding up of a company by the Court, or subject to its supervision, shall within 12 days after the date thereof be advertised by the petitioner once in the *Burma Gazette*, and shall be served upon such person (if any) and in such manner as the Court may direct (Forms Nos. 11, 12, and 13).

Proceedings on order. 32. Within 10 days after any order for the winding up of a company has been drawn up and signed a notice shall be taken out by the petitioner to proceed with the winding

up of the company, and in default thereof such notice may be taken out by any other person interested in the winding up to whom the Judge may think fit to give the conduct and prosecution of the said order, and in either case such notice shall be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such notice a time shall, if the Judge thinks fit, be fixed for the appointment of an Official Liquidator, and for the proof of debts and for the list of contributories to be brought in and directions may be given as to the advertisement to be issued for all or any of such purposes and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and when necessary, by further notice and any such directions as aforesaid may be given, added to, or varied, at any subsequent time as may be found necessary.

Appointment of Official Liquidators. 33. The Judge may appoint a person to the office of Official Liquidator without any previous advertisement or notice to any party, or may fix a time and place for the appointment of an Official Liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

Advertisement as to appointment. 34. When a time and place are fixed for the appointment of an Official Liquidator, such time and place shall be advertised in such manner as the Judge or a Deputy Registrar shall direct, so that the first or only advertisement shall be published within 14 days and not less than 7 days before the day so fixed (Form No. 14).

Security of of Official Liquidators 35. Every Official Liquidator shall, if so required, give security by entering into a recognizance with a sufficient surety or sureties or without sureties or by depositing Government Securities in such sum as the Court may approve (Forms Nos. 16 and 17).

Order appointing Official Liquidator. 36. The Official Liquidator shall be appointed by order; and unless he shall have given security, a time shall be fixed by such order within which he is to do so, and the order shall fix the times or periods at which the Official Liquidator is to file his accounts of receipts and payments, and shall direct that all moneys to be received shall be paid into the Bank of Bengal, or in the case of a District Court into that Court, immediately after the receipt thereof to "the account of the Official Liquidator of the company" and an account shall be opened there accordingly, and an office copy of the order shall be lodged at the Bank of Bengal (Form No. 18).

37. When an Official Liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by a Deputy Registrar of the Chief Court of Lower Burma, or the District Judge, as the case may be. **Certificate of security given.**

38. The Official Liquidator shall on each occasion of passing his accounts, and also whensoever the Judge may so require, satisfy the Judge or in the case of the Chief Court a Deputy Registrar that his sureties are living, and resident in the Province of Burma, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security, within such time as shall be directed. **Fresh security when required.**

39. Every appointment of an Official Liquidator shall be advertised in such manner as the Judge or in the case of the Chief Court a Deputy Registrar shall direct immediately after he has been appointed and has given security. **Advertisement of appointment made.**

40. Where it is desired to appoint provisionally an Official Liquidator an application for that purpose may at any time after the presentation of the petition for winding up the company be made by petition without advertisement or notice to any person unless the Judge or in the case of the Chief Court a Deputy Registrar shall otherwise direct; and such Provisional Official Liquidator may, if the Judge shall think fit, be appointed without security. **Provisional Official Liquidator.**

41. In case of the death, removal, or resignation of an Official Liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same. **Vacancy in office of Official Liquidator.**

42. (1) Where an Official Liquidator receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by the Act or these Rules to be performed by himself.

(2) Where the Official Liquidator is an advocate, pleader or solicitor he may contract that the remuneration for his services as Official Liquidator shall include all professional services.

43. (1) The assets of a company in a winding up by the Court, remaining after payment of the fees and actual expenses incurred in realizing or getting in the assets, shall,

subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority, namely :—

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Second.—The Official Liquidator's necessary disbursements, other than actual expenses of realization heretofore provided for.

Third.—The costs of any person properly employed by the Official Liquidator.

Fourth.—The remuneration of the Official Liquidator.

(2) No payments in respect of bills or charges of advocates, pleaders, solicitors, managers, accountants, brokers, or other persons, other than payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the Judge or a Deputy Registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the advocate or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a Judge thereof to be paid by the company or the Official Liquidator, or the rights of the person to whom such costs are payable.

Accounts.

44. The Official Liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the Judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these rules.

Remuneration.

45. The Official Liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as

the Judge may from time to time direct, and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter as the Judge may think fit, the sum so fixed as to cover the expenses of the employment of assistants or clerks by the Official Liquidator, and also his office rent, stationery, etc., unless the Judge shall otherwise order. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the Official Liquidator, on notice to such persons (if any) and supported by such evidence as the Judge shall require, nevertheless the Judge may from time to time allow any sum he may think fit to the Official Liquidator, on account of the salary or remuneration to be thereafter allowed.

Passing accounts.

46. The accounts of the Official Liquidator shall be filed at such times as may from time to time be ordered by the Judge or a Deputy Registrar and shall, upon notice to such persons (if any) as the Judge or a Deputy Registrar shall direct, be audited, passed or verified as may be ordered.

Joint Official Liquidators.

47. Where Joint Official Liquidators are appointed the above rules relating to the Official Liquidators shall be applicable *mutatis mutandis*.

Proof of debts. Advertisement for creditors.

48. For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts of claims, an advertisement shall be issued at such time as the Judge or a Deputy Registrar shall direct, and such advertisement shall fix a time for the creditors to send their names and addresses and the particulars of their debts, or claims, and the names and addresses of their advocates or pleaders (if any), to the Official Liquidator, and appoint a day for adjudicating thereon (Form No. 24).

Attendance of creditors.

49. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the Official Liquidator, but upon such notice being given, they are to come in, and prove their debts or claims within a time to be therein specified.

List of debts.

50. The Official Liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company and he shall make out and leave with the Court a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be

allowed without further evidence, and which of them in his opinion ought to be proved by the creditors, and he shall make and file, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

Allowance of debts. 51. At the time appointed for adjudicating upon the debts and claims or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the Official Liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed, and the Official Liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance (Form No. 27).

Proof of debts. 52. The Official Liquidator shall give notice (Form No. 28) to the creditors whose debts or claims have not been allowed upon his affidavit that they are required to come in and prove the same (Form No. 29) by a day to be therein named, being not less than 4 days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement or by adjournment (as the case may be) for adjudicating upon such debts and claims.

Estimation of value of debts and claims. 53. The value of all debts and claims against the company shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company.

Dividends payable principal and interest. 54. Creditors whose debts and claims carry interest, and are allowed, shall be entitled to receive dividends upon what was due for principal and interest at the date of the winding up. In the event of there being a surplus the dividends payable to such creditors shall be applied, firstly, towards payment of the interest, and secondly, in reduction of the principal due to them.

Interest may be allowed on all claims in respect of which it is recoverable as damages.

Cost of proof. 55. Such creditors as come in and prove their debts or claims pursuant to notice from the Official Liquidator shall be allowed their costs of proof which will be added to the debt.

56. The result of the adjudication upon debts and claims shall be in the form of a certificate (Form No. 30) to be signed by the Judge or in the case of the Chief Court by a Deputy Registrar from time to time as convenience may require, and such certificate shall state whether the debts or claims are allowed or disallowed and whether allowed as against any particular assets, or in any other qualified or special manner (Form No. 31). Judge's certificate of debts.

57. The Official Liquidator shall, with all convenient speed after his appointment, or at such time as the Judge shall direct, make out and leave with the Court a list of the contributories of the company; and such list shall be verified by the affidavit (Forms Nos. 32 and 33) of the Official Liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory and distinguish the several classes of contributories. And such list may, from time to time, by leave of the Judge, be varied or added to by the Official Liquidator (Form No. 40). List of contributories.

58. Upon the list of contributories being left with the Court, the Official Liquidator shall obtain an appointment for the Judge to settle the same and shall give notice (Form No. 34) in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest such person is included in such list, and in case any variation or addition to such list shall at any time be made by the Official Liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served (Forms Nos. 35 and 36) 4 clear days before the day appointed to settle such list or such variation or addition (Forms Nos. 37 and 38). Notice of appointment to settle.

59. A list of contributories as the same shall have been settled (Form No. 39) by the Judge shall from time to time (when the Judge shall so order) be drawn up by the Official Liquidator and signed by the Judge for the purpose of stating the result of such settlement down to any particular time, or as to any particular person or stating any variation of the list. Judge's certificates.

60. Any moveable or immoveable property belonging to the company may be sold with the approbation of the Judge in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the Judge shall so direct, by the Official Liquidator, in which case the conditions or contracts of sale shall be settled and approved of Sales of property.

by the Judge or in the case of the Chief Court by a Deputy Registrar unless the Judge shall otherwise direct; and unless on account of the small amount of the purchase-money or other cause, it shall, having regard to the amount of the security given by the Official Liquidator, be thought proper that the purchase-money shall be paid to him, all conditions and contracts of sale shall provide that the purchase-money shall be paid by the respective purchasers into Court or into the Bank of Bengal to the account of the Official Liquidator of the company, or in the case of a District Court into that Court.

Calls. Summons for call.

61. Every application to the Judge to make any call on the contributories or any of them for any purpose authorized by the said Act, shall be made by petition supported by an affidavit (Form No. 41) stating the proposed amount of such call: and notice of such application shall be served 4 clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call or if the Judge shall so direct, notice of such intended call may be given by advertisement (Form No. 43) or such other public notification as the Judge in his discretion may think sufficient.

Service of order

62. When any order (Form No. 44) for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice (Form No. 45) from the Official Liquidator specifying the amount or balance due from such contributory, having regard to the provisions of the said Act in respect to such call; but such order need not be advertised unless for any special reason the Judge shall so direct.

Proceedings under order.

63. At the time of making an order for call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment or upon notice of the application to enforce payment of the call duly served and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were, respectively, required to pay, or any less sum which may appear to be due from them, respectively (Forms Nos. 46, 47 and 50).

64. If any Official Liquidator shall not pay all the moneys received by him into the Bank of Bengal or in the case of a District Court into that Court, to the account of the Official Liquidator of the company, within 7 days next after the receipt thereof unless the Judge shall have otherwise directed, such Official Liquidator shall be charged in his account with Rs. 10 for every Rs. 1,000 and a proportionate sum for any larger amount retained in his hands beyond such period for every 7 days during which the same shall have been so retained and the Judge may, for any such retention, disallow the salary or remuneration of such Official Liquidator. **Payment of moneys and deposit of securities. Default of payment into Bank.**

65. All bills, hundis, notes and other securities payable to the company or to the Official Liquidator or thereof shall, as soon as they shall come to the hands of such Official Liquidator, be deposited by him in the Bank of Bengal, or in the case of a District Court in that Court, for the purpose of being presented for acceptance and payment, or for payment only, as the case may be. **Bill, etc., to be deposited in Bank.**

66. All orders for payment of calls, balances or other moneys due from any contributory or other person shall direct the same to be paid into Court or into the Bank of Bengal or in the case of a District Court into that Court, to the account of the Official Liquidator of the company unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the Official Liquidator, be thought proper to direct payment thereof to the Official Liquidator; provided that where any such order has been made directing payment of a specific sum into Court or into the Bank of Bengal or in the case of a District Court into that Court, as aforesaid, in case it shall be thought proper for the purpose, of enabling the Official Liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order or after the time thereby fixed for payment, be made without notice for the payment of the same sum to the Official Liquidator. **Calls, etc., to be paid into Bank.**

67. At the time of the service of any order for payment into Court or into the Bank of Bengal or into a District Court as aforesaid the Official Liquidator shall give to the party served a notice to the purport or effect set forth in Form No. 48 in the Schedule hereto, for the purpose of informing him how the payment is to be made, and before the time **Notice as to payment into Bank.**

fixed for such payment the Official Liquidator shall furnish the cashier of the Bank of Bengal, or in the case of a District Court the Bailiff thereof, with a certificate to the purport or effect set forth in Form No. 49 in the Schedule hereto to be signed by such cashier or Bailiff as the case may be and delivered to the party paying in the money therein mentioned.

Affidavit of non-payment.

68. For the purpose of enforcing any order for payment of money into Court or into the Bank of Bengal or in the case of a District Court into that Court, an affidavit of the Official Liquidator to the purport or effect set forth in the Form No. 51 in the Schedule hereto, shall be sufficient evidence of the non-payment thereof.

Title of account in Bank.

69. All moneys, bills, hundis, notes and other securities, paid and delivered into Court or into the Bank of Bengal or in the case of a District Court into that Court, shall be placed to the credit or account of the Official Liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of securities and payment out, and investment of, moneys. Requests and cheques.

70. All bills, hundis, notes and other securities delivered into Court or into the Bank of Bengal or in the case of a District Court into that Court, shall be delivered out upon a request signed by the Official Liquidator, and countersigned by the Judge or one of the Judges of the Court or in the case of the Chief Court by a Deputy Registrar, and moneys placed to the account of the Official Liquidator shall be paid out upon such cheques or orders signed by the Official Liquidator and countersigned by the Judge or one of the Judges of the Court or by a Deputy Registrar of the Chief Court.

Investment.

71. All or any part of the money for the time being standing to the credit of the account of the Official Liquidator in Court or at the Bank of Bengal or in the case of a District Court in that Court, and not immediately required for the purposes of winding up may be invested in the purchase of Government Promissory Notes in the name of the Official Liquidator. All investments of moneys lying in Court or in the Bank of Bengal shall be made by the Bank of Bengal upon a request (Form No. 52) signed by the Official Liquidator and countersigned by the Judges or one of the Judges of the Court or a Deputy Registrar of the Chief Court, and all investments of moneys standing to the credit of the account of the Official Liquidator in a District Court shall be made upon a request (Form No. 53) signed by the Official Liquidator and addressed to such Court; such request, respectively,

shall be sufficient authority for debiting the account with the purchase-money; and such Government notes shall be retained by or deposited with the Court or the Bank of Bengal or by or with the said District Court in the name and on behalf of the Official Liquidator, and such notes shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose signed by the Official Liquidator, and countersigned by the Judge or one of the Judges of the Court or Deputy Registrar of the Chief Court under an order made by the Court.

Receipt of dividends.

72. All dividends and interest to accrue due from any such notes shall from time to time be received by the Court or the Bank of Bengal under a power of attorney to be executed by the Official Liquidator, and placed to the credit of the account of such Official Liquidator, and when any of such notes shall become payable the same shall be renewed or the principal and interest due thereon be received and placed to the credit of the account of the Official Liquidator.

Meetings of creditors or contributories. Notice.

73. When the Court shall direct a meeting of the creditors or contributories of the company to be summoned under section 239 of the said Act, the Official Liquidator shall give notice (Form No. 54) in writing, 7 clear days before the day appointed for such meeting, to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which the Court desires to ascertain the wishes of the creditors or contributories, or if the Court shall so direct, such notice may be given by advertisement in the daily papers, in which case the object of the meeting need not be stated and it shall not be necessary to insert such advertisement in the *Burma Gazette*.

Votes.

74. The votes of the creditors or contributories of the Company at any meeting summoned by the direction of the Court may be given either personally or by proxy; but no creditor shall appoint (Form No. 55) a proxy who is not a creditor of the company, whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

Memorandum as to calling meeting.

75. The direction of the Judge for any meeting of creditors or contributories under section 239 of the said Act, and the appointment of a person to act as Chairman of any such meeting shall be testified by a memorandum (Form No. 56) signed by the Judge or one of the Judges of the Court or a Deputy Registrar of the Chief Court (Form No. 57).

Sanction to bills of exchange, etc.,

76. The sanction of the Court to the drawing, accepting, making and endorsing of any bills of exchange, hundi or promissory note by any Official Liquidator, shall be testified by a memorandum (Form No. 58) on such bill of exchange or promissory note signed by the Judge or one of the Judges of the Court or by a Deputy Registrar of the Chief Court.

Compromise.

77. Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the company shall be supported by the affidavit of the Official Liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum (Form No. 60) signed by the Judge or one of the Judges of the Court on the agreement of compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

Other cases.

78. The direction or sanction of the Judge for any other proceeding for act to be taken or done by the Official Liquidator under the powers conferred on him by section 179 shall be obtained upon application on affidavit and an order (Form No. 61) shall be drawn up thereon, unless the Judge shall otherwise direct.

Application to the Court under sections 181, 185 and 216 of the Act Application how made.

79. Every application under sections 212 and 215 of the Act shall be made by petition and every application under section 237 of the Act shall be made by petition.

Insertion of advertisements.

80. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *Burma Gazette* and in such other newspaper or newspapers, advertiser or advertisers and for such number of times as may be directed. The Judge, however, may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

Affidavits. Filing and office copies of affidavits.

81. When an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in Court, and serve a copy thereof on the Official Liquidator. The person other than the Official Liquidator filing the affidavit shall not be required to take an office copy

thereof, but an office copy thereof shall be taken by the Official Liquidator and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Judge shall otherwise direct.

Register of proceedings. 82. A Register shall be kept by the Court of all proceedings in each matter in a book set apart for that purpose.

Provisional Official Liquidators. 83. All the above rules relating to Official Liquidator shall, so far as the same are applicable and subject to the directions of the Court or the Judge, in each case, apply to Provisional Liquidators.

Attendance and appearance of parties. 84. No order to the prejudice of contributories or creditors shall be made *ex parte* on the application of the Official Liquidator and every person for the time being on the list of contributories of the company left with the Judge by the Official Liquidator, and every person having a debt or claim against the Company allowed by the Judge shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of, but if the Judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company he may direct such costs or a gross sum in lieu thereof to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

Appointment of representative party. 85. The Judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit to represent before him at the expense of the company all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding up of the Company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall unite in employing the same Advocate or Pleader to represent them.

Appearance to be filed before attendance. 86. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he has filed an appearance in the case.

Service of summonses, notices, etc. Service how effected. 87. Services upon contributories and creditors shall be effected, except when personal service is required, by sending the notice, or a copy of the summons or order or other proceedings, through the post in a prepaid letter, addressed to the Advocate or Pleader (if any) of the party

to be served or otherwise to the party himself, if a contributory, to his last known address or place of abode, and if a creditor, to the address given by him pursuant to the foregoing Rule 48, and such notice or copy, summons, order, or other proceedings, shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office, and notwithstanding the same may be returned by the Post Office.

Name of person incomplete.

88. No service under these rules shall be deemed invalid by reason that any name other than the surname of the person (if the said person be a European) or any name other than the final name ordinarily used by the person (being other than a European) on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories or in the summons, order, notice or other document, wherein the name of such contributory or creditor is contained, provided the Court is satisfied that such service is in other respects sufficient.

Transfer of winding up from Chief Court to District Court under sections 218 and 219 of the Act.

89. Applications for the transfer of winding up proceedings either to or from the Chief Court from or to a District Court, or from one District Court to another, as the case may be, shall be made by petition which shall be filed in Court. Upon the filing of such petition as aforesaid the Judge shall give such orders and directions and direct that an advertisement thereof be made as the nature of the case may require, and shall fix a date for the hearing of such petition.

Order for transfer.

90. When the petition in Rule 89 has been heard and an order thereon passed by the Court, the Court shall thereupon make an order (Forms Nos. 62 and 63) for transferring the winding up proceedings.

Termination of winding up. Proceedings on termination.

91. Upon the termination of the proceedings for the winding up of any company, a balance-sheet shall be brought in by the Official Liquidator of his receipts and payments, and verified by his affidavit; and the Official Liquidator shall pass his final account, and the balance (if any) due on the final account shall be certified by the Judge or in the case of the Chief Court by a Deputy Registrar, and upon payment by the Official Liquidator of the balance (if any) in such manner as the Judge shall direct, the recognizances entered into by the Official Liquidator and his sureties may be vacated (Form No. 65).

Dissolution of company.

92. When the Official Liquidator has passed his final account, and the balance (if any) due thereon has been paid

in such manner as the Judge shall direct, the Official Liquidator shall, in case the company has not been already dissolved, apply to the Judge for an order that the company be dissolved from the date of such order (Form No. 66).

93. When the proceedings for winding up any company have been completed, the file of proceedings and the book containing the Official Liquidator's account shall be deposited in the records of the Court. **Deposit of proceedings in Court.**

94. The Advocate or Pleader of the Official Liquidator shall conduct all such proceedings as are ordinarily conducted by Advocates or Pleaders of the Chief Court, or District Courts: and where the attendance of his Advocate or Pleader is required on any proceedings in Court or Chambers, the Official Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his Advocate or Pleader or the Court shall direct him to attend. **Duties of Advocate or Pleader of Official Liquidator.**

95. The Forms set forth referred to in the Schedule to these rules, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such Schedule. **Forms.**

96 Where an order is made by the Chief Court in Court or in Chambers for payment of any costs, the order shall direct the taxation thereof by the taxing officer; except in cases where a gross sum in lieu of taxed costs is fixed by the order. **Taxation of costs.**

97. The power of the Court or a Judge to enlarge or abridge the time for doing any act, or taking any proceeding to adjourn, or review any proceeding, and to give any direction as to the course of proceedings, is unaffected by these rules. **General power of Court.**

98. All accounts, lists, notices and other documents directed by these rules to be filed in Court shall be filed in the office of the original side of the Chief Court or of the District Court. **Accounts, etc., to be filed in office of the Court.**

99. The general practice of the Court, including the course of proceeding and practice, in Chambers and the rules of the Court relative thereto, shall in cases not provided for by the Act or these rules, and so far as the same are applicable and not inconsistent with the Act or these rules apply to all proceedings, for winding up a company. **General practice to apply.**

Affidavits and Advocates or Pleaders.

100. In all cases in which by law a person may make a solemn affirmation instead of an affidavit, the word affidavit in these rules shall be deemed and taken to mean a solemn affirmation.

Application of rules

101. These rules apply to proceedings under the Indian Companies Act, 1913, and to proceedings under the Indian Companies Act, VI of 1882 and Act X of 1866.

No. 1.—FORM OF ORDER.

[RULE 8.]

(*For General Heading, see Rule* 3.)

Upon the application of the petitioners dated and upon hearing the Advocates/Pleaders for the petitioners and on reading the petition filed on the day of , it is ordered, that an enquiry be made what are the debts, claims and liabilities of or affecting the said company on the day of 19 , and that notice of the presentation of the said petition be inserted in ( ) and that a list of the persons who are creditors of the company on the said day of and the affidavit verifying the same be filed in the office of the undersigned on or before the day of .

A. B.,
Judge
Deputy Registrar.
District Judge.

No. 2.—[SEE RULE 9.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that a petition for confirming a resolution reducing the capital of the above company from Rs. to Rs. was on the day of presented in this Court, and is now pending and that the list of creditors of the company is to be made out as for the day of 19 .

Deputy Registrar.
District Judge.

No. 3.—AFFIDAVIT VERIFYING LIST OF CREDITORS.

[RULE 11.]

(*For General Heading, see Rule* 3.)

I, A. B. of, etc., make $\frac{\text{oath}}{\text{solemn affirmation}}$ and say as follows :—

1. The paper writing now produced and shown to me and marked with the letter A, contains a list of the creditors of and persons having claims upon the said company on the day of 19 , (the date fixed by order in this matter dated ,) together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company

$\frac{\text{Sworn}}{\text{Solemnly affirmed}}$, etc.

LIST OF CREDITORS REFERRED TO IN THE LAST FORM.

A.

In the matter, etc.

This list of creditors, marked A, was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of 19 .

X. Y., etc.

Names, addresses and descriptions of the creditors.	Nature of debt or claim.	Amount of debt or claim.

No. 4.—[See Rule 13.]

(*For General Heading, see Rule* 3.)

To Mr.

You are requested to take notice that a petition has been presented to the ( ) Court of to confirm a special resolution of the above company for reducing its capital to Rs. , and that in the list of persons admitted by the company to have been on the day of creditors of the company, your name is entered as a creditor (*here state the amount of the debt or nature of the claim*).

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above you must on or before the day of send the particulars of your claim and the name and address of your Advocate or Pleader (if any) to the undersigned at . In default of your so doing the above entry in the list of creditors will, in all proceedings under the above application to reduce the capital of the company, be treated as correct.

Dated the day of 19

A. B.,

Advocate/Pleader of the said Company.

No. 5.—[See Rule 14.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that a petition has been presented to the Court of at for confirming a resolution of the above company for reducing its capital from Rs. to Rs. . A list of the persons admitted to have been creditors of the company on the day of 19 may be inspected at the office of the company at or at the office of , at any time during usual business hours on payment of the charge of Re. 1.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered must on or before the day of

send in his name and address, and the particulars of his claim, and the name and address of his Advocates or Pleaders (if any) to the undersigned at or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of 19 .

A. B.,

Advocate/Pleader for the said Company.

No. 6.—[Rule 15.]

(*For General Heading, see Rule* 3.)

We, C. D. of, etc. (the secretary or agent of the said company), E. F. of, etc. (the advocate of the said company), and A. B. of, etc. (the managing director of the said company), severally make oath and say as follows :—

I, the said C. D., for myself, say as follows :—

1. I did, on the day of 19 , in the manner hereinafter mentioned serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names and addresses, and descriptions appear in the first column of the creditors, marked A, referred to in the affidavit of filed on the day of 19 . **Rule 13.**

2. I served the said respective copies of the said notice by putting such copies, respectively, duly addressed to such persons, respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively) and with the proper postage stamps affixed thereto as prepaid letters, into the Post Office receiving house at between the hours of and of the clock in the noon of the said day of

And I, the said E. F., for myself, say as follows :—

3. A true copy of the notice now produced and shown to me, and marked C, has appeared in the , of the day of 19 , the of the day of 19 , etc. **(If the notice issued under Rule 14.)**

Rule 15. 4. I have, in the paper writing now produced and shown to me, and marked D, set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice B now produced and shown to me by persons claiming to be creditors of the company for larger amounts than are stated in the list of creditors, marked A, referred to in the affidavit of filed on the day of 19 .

(If notice issued under Rule 14.) 5. I have, in the paper writing now produced and shown to me, marked E, set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of 19 , not appearing on the said list of creditors, marked A, and who claimed to be entered thereon.

And we, C. D. and A. B., for ourselves, say as follows :—

Rule 15. 6. We have, in the first part of the said paper writing, marked D (now produced and shown to us), and also in the first part of the said paper writing, marked E (also produced and shown to us), respectively, set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims, respectively, as are not wholly admitted.

Rule 15. 7. We have, in the second part of each of the said paper writings, marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said Exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be set apart, and appropriated in such manner as the Judge shall direct.

Sworn, etc.

EXHIBITD REFERRED TO IN THE LAST-MENTIONED AFFIDAVIT.

D.

In the matter, etc.

List of debts and claims of which the particulars have been sent in to ( ) by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors made out by the company.

This paper writing, marked D, was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this . day of 19 .

X. Y., etc.

First part.

Debts and claims wholly or partly admitted by the company :—

Names, addresses and descriptions of creditors.	Particulars of debt or claim	Amount claimed.	Amount admitted by the company to be owing to creditors.	Debts proposed to be set apart and appropriated in full although disputed.

Second part.

Debts and claims wholly disputed by the company :—

Names, addresses and descriptions of claimants	Particulars of claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

EXHIBIT E REFERRED TO IN THE LAST-MENTIONED AFFIDAVIT

E.

In the matter, etc.

List of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company and to be entered on the list of the creditors made out by the company.

This paper writing, marked E, was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this day of 19 .

X. Y., etc.

First Part.—(Same as in Exhibit D.)

Second Part.—(Same as in Exhibit D.)

NOTE.—The names are to be inserted alphabetically.

No. 7.—[SEE RULE 16.]

(*For General Heading, see Rule* 3.)

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit, and giving notice thereof to Mr. the Advocate/Pleader of the company, on or before the day of next; and you are to attend in person or by your Advocate/Pleader in this Court on the day of 19 at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or document relating to your claim.

In default of your complying with the above directions, you will (be precluded from objecting to the proposed reduction of the capital of the company), or (in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor, for such amount only as is set against your name in the list of creditors).

Dated this day of 19

A. B.,

Advocate/Pleader for the said Company.

No. 8.—[See Rule 20.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that a petition presented to this Court on the day of , for confirming a resolution reducing the capital of the above company from Rs. to Rs. , is directed to be heard before the Honourable on the day of 19 .

C. and D. of 19 .

(Agents for E. and F. of

Advocates / Pleaders for the Company.

Forms relating to winding up proceedings.

No. 9.—*Advertisement of Petition.*

[Rule 26.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that a petition for the winding up of the above-named company by the (or subject to the supervision of the) Chief Court of Lower Burma (or District Court of) was on the day of 19 presented to the said Court by the said company (or A. B. of , a creditor or contributory of the said company or as the case may be). And that the said petition is directed to be heard before on the day of 19 ; and any creditor or contributory of the said company, desirous to oppose the making of an order for the winding up of the said company under the above Act, should appear at the time of hearing by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the regulated charge for the same.

C. and D. of, etc.,

Advocates / Attorneys for the Petitioners.

No. 10.—*Affidavit verifying Petition.*

[RULE 28.]

(*For General Heading, see Rule* 3.)

I, A. B. of, etc., make oath and say (or do solemnly affirm) that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other persons or person I believe to be true.

Sworn, etc.,
Or solemnly affirmed, etc.

No. 11.—*Order for Winding up by the Court.*

[SECTIONS 130 AND 131 OF THE ACT, AND RULE 31.]

(*For General Heading, see Rule* 3.)

Upon the petition of the above-named company or, A. B. of, etc., a creditor (or contributory of the above-named company) on the day of 19 , preferred unto the said Court, and upon hearing counsel for the petitioner, and for and upon reading the said petition, an affidavit (or solemn affirmation) of the said petitioner, filed, etc., verifying the said petition, an affidavit (or solemn affirmation of S. M.) filed the day of 19 , the *Burma Gazette* of the day of , the of the day of (enter any other paper) each containing an advertisement of the said petition (enter any other evidence) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1882.

No. 12.— *Order for Winding up, subject to supervision.*

[SECTIONS 191 AND 192 OF THE ACT, AND RULE 31.]

(*For General Heading, see Rule* 3.)

Upon the petition, etc., this Court doth order that the voluntary winding of the said company be continued, but subject to the supervision of the Court: and

any of the proceedings under the said voluntary winding up may be adopted as this Court shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to this Court as there may be occasion.

No. 13.—*Advertisement of Order to Wind up.*

[Rule 31.]

(*For General Heading, see Rule* 3.)

By an order made by the Chief Court of Lower Burma (or District Court of) in the above matter, dated the day of 19 , on the petition of the abovenamed company (or A. B. of): It was ordered that, etc., *as in order.*

C. and D. of, etc.,

Advocates/Pleaders for the said Petitioner.

No. 14.—*Advertisement of time and place for the appointment of Official Liquidator.*

[Rule 34.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that this Court has fixed the day of 19 , at o'clock in the noon in the Court House of the Chief Court of Lower Burma (or at the District Court House at) before as the time and place for the appointment of an Official Liquidator of the abovenamed company.

Judge/Deputy Registrar

(*or as the case may be*).

No.. 15.—*Proposal for appointment of Official Liquidator (and Sureties) where Form No. 14 has been issued.*

(*For General Heading, see Rule* 3.)

We, the undersigned contributories of the above-named company for the number of shares placed opposite our respective names, hereby propose Mr. R. P. H. of, etc., public accountant, to be the Official Liquidator of the said company (and H. N. of, etc., and J. P. of, etc., to be his sureties) :—

Name.	Address.	Number of shares held.

No. 16.—*Recognizance of the Official Liquidator and Sureties.*

[RULE 35.]

(*For General Heading, see Rule* 3.)

The Hon'ble Mr. Justice (or the Judge of of the District Court) has approved of and allowed this recognizance.

Judge
Deputy Registrar
(*or as the case may be*).

R. P. H. of, etc., W. B. of, etc., and T. P. of, etc., in the Chief Court of Lower Burma (or District Court of) personally appearing, do acknowledge themselves, and every of them doth acknowledge himself to owe the respective sum of money set opposite to their respective names in the Schedule hereto to be paid to the Hon'ble the Chief Judge of the said Chief Court (or to the Judge of the said District Court of), his executors or administrators ; and in default of payment of the said sums, the said R. P. H.,

W. B., and T. P. R. willing and doth agree for himself, his heirs, executors and administrators, by these presents, that the said sums shall be levied, recovered and received of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements and hereditaments, goods and chattels of them and every of them wheresoever the same shall be found. Witness the day of 19 . Whereas in the matter of, etc. (take title from order to wind up), the Chief Court of Lower Burma (or District Court of the) has by an order dated the day of 19 , appointed the said R. P. H , Official Liquidator of the said company, and has thereby directed him to give security to be approved of by the said Court, or (in case the security precedes the order appointing) has approved of the said R. P. H. as a proper person to be appointed Official Liquidator of the said company (upon his giving security). And whereas the said Court has approved of the said W. B. and T. P. to be sureties for the said R. P. H. in the amounts said opposite to their respective names in the Schedule hereto and has also approved of the above-written recognizance. With the under-written condition as a proper security to be entered into by the said R. P. H., W. B. and T. P., pursuant to the said order and (or pursuant to) the general order of the said Court in that behalf ; and in testimony of such approbation the Honourable , one of the Judges of the said Court (or in a District Court), , (the Judge of the said Court) hath signed an allowance in the margin hereof. Now the condition of the above-written recognizance is such that if the said R. P. H. his executors or administrators or any of them do and shall duly account for what the said R. P. H. shall receive, or become liable to pay, as Official Liquidator of the said company at such periods and in such manner as the said Court shall appoint, and pay the same as the said Court hath (by the said order) directed, or shall hereafter direct, then the above recognizance to be void, otherwise to remain in full force and virtue.

The Schedule above referred to—

	Rs.
R. P H.	1,000
W. B.	1,000
T. P.	1,000

Taken and acknowledged by the above-named R. P. H., etc., etc.

No. 17.—*Affidavit of Sureties.*

[RULE 35.]

(*For General Heading, see Rule* 3.)

We, W. B. of, etc., and T. P. of, etc., severally make oath and say (or solemnly affirm) as follows :—

1. I, the said W. B., for myself, say that I am worth the sum of Rs. of lawful money of British India, over and above what is sufficient for the payment of all my just debts and liabilities.

2. And I, the said T. P., for myself, say that I am worth the sum of Rs. of, etc. (as above).

Sworn, etc.,
Or solemnly affirmed.

No. 18.—*Order appointing an Official Liquidator.*

[RULES 35 AND 36.]

(*For General Heading, see Rule* 3.)

The day of
19 .

Upon the application, etc., and upon reading, etc., the Court doth hereby appoint R. P. H. of, etc., Official Liquidator of the above-named company. (If security has not been given, add, and it is ordered that the said R. P. H. do, on or before the day of next, give security to be approved of by the Court.) And it is ordered that the said R. P. H. on the day of and day of 19 and the same days in each succeeding year, file his account in the office of the Deputy Registrar (or office) of the said Court (or in the case of a District Court in the District Court at) and it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of Bengal, Rangoon Branch (or the Branch nearest to the Court in which the matter is pending, or in the case of District Court into the District Court at), to the credit of the account of the Official Liquidator of the

said company, within 7 days after the receipt thereof. (In case two or more Official Liquidators are appointed add.) And the said Court doth declare that the following acts, required or authorized by the above Act to be done by the Official Liquidators may be done by either (or any one, or two) of the Official Liquidators hereby appointed, that is to say (describe the acts) and all other acts so required or authorized to be done by both (or all) the Official Liquidators hereby appointed.

No. 19.—*Order appointing a Provisional Official Liquidator.*

[RULES 35, 36 AND 83.]

(*For General Heading, see Rule 3.*)

The day of 19 .

Upon the application, etc., and upon reading, etc.. the Court doth hereby appoint R. P. H. of, etc., Provisionally Official Liquidator of the abovenamed company. (If security dispensed with, add without security; or if security is to be given, add direction as to security account and payment into the Bank as in Form No. 18) and the said Court doth hereby limit and restrict the powers of the said R. P. H. as such Provisional Official Liquidator to the following acts, that is to say (describe the acts which the Provisional Official Liquidator is to be authorized to do).

No. 20.— *Sanction of appointment of Advocate or Pleader to Official Liquidator and Appointment.*

[SEE SECTION 146 OF THE ACT.]

(*For General Heading, see Rule 3.*)

The Court sanctions the Official Liquidator appointing an advocate (or pleader) to assist him in the performance of his duties.

I hereby appoint L. H. to be my Advocate/Pleader in this matter, dated this day of 19 .

R. P. H.,
Official Liquidator.

No. 21.—*Order for payment of money or delivery of books, etc., to the Official Liquidator.*

[SEE SECTIONS 149 AND 151 OF THE ACT.]

(*For General Heading, see Rule* 3.)

Upon the application of, etc., and on reading, etc., it is ordered that A. B. of, etc., do, within 4 days after service hereof, pay to (or deliver, convey, surrender or transfer to or into the hands of) R. P. H., the Official Liquidator of the said company, at the office of the said R. P. H., situate at, etc., the sum of Rs. being the amount of debt appearing to be due from the said A. B. on his account with the said company (or any sum or balance, books, papers, estate or effects specifying the property) now being in the hands of the said A. B. and to which the said company is *primâ facie* entitled (or otherwise as the case may be).

No. 22.—*Direction to open Account at the Bank of Bengal.*

(RULES 36, 60, 64 AND 70.]

(*For General Heading, see Rule* 3.)

To the Agent of the Bank of Bengal at

SIR,

An order, dated the day of 19 , having been made in the above matter by the Chief Court of Lower Burma (or District Court of) for winding up the abovenamed company by the Court, under the provisions of the said Act, the R. P. H., of having, by order dated the day of 19 , been appointed to be Official Liquidator of the said company, you are requested to open an account, to be entitled "The account of the Official Liquidator of the company," in your books pursuant to the said Act. All cheques drawn upon such account must be signed by the Official Liquidator, whose signature is attached hereto, and countersigned by , whose signature is also attached hereto.

I am, Gentleman,
Your most obedient servant,
Judge
Deputy Registrar.

Signature,
R. P. H., *Official Liquidator.*
G. W.

In the case of winding up proceedings being carried on in a District Court, the Liquidator of the company should present a similar application to the Judge as the above, *mutatis mutandis*, for leave to open such an account in the District Court.

No. 23.—*Advertisement of appointment of Official Liquidator.*

[RULE 39.]

(*For General Heading, see Rule 3.*)

The Honourable Mr. Justice (or the District Judge of) has, by an order dated the day of 19 , appointed R. P. H. of to be Official Liquidator of the abovenamed company.

Dated this day of 19 .

Judge
Deputy Registrar.

No. 24.—*Advertisement for Creditors.*

[RULE 48.]

(*For General Heading, see Rule 3.*)

The creditors of the abovenamed company are required on or before the day of 19 , to send their names and addresses and the particulars of their debts or claims and the names and addresses of their advocates or pleaders (if any) to R. P. H. of , the Official Liquidator of the said company, and if so required by notice in writing from the Official Liquidator, are in person or by their advocates or pleaders to come in and prove their said debts or claims, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts proved.

This day of 19 , at o'clock in the noon, at the said is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 19 .

Judge
Deputy Registrar.

No. 25.—*Affidavit of Official Liquidator as to Debts and Claims.*

[RULE 50.]

(*For General Heading, see Rule* 3.)

I, R. P. H. of, etc., the Official Liquidator of the above-named company, make oath and say (or solemnly affirm) as follows :—

1. I have, in the paper writing now produced and shown to me, and marked with the letter A, set forth a list of all the debts and claims, the particulars of which have been sent in to me by persons making claim upon or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf dated the day of 19 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company and I have, in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence. and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims : and I believe that such amounts, respectively, are justly due and proper to be allowed ; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (or solemnly affirmed), etc.

No. 26.—*Exhibit referred to in Affidavit.*

No. 25.

A.

(*For General Heading, see Rule* 3.)

List of debts and claims of which the particulars have been sent in to the Official Liquidator.

This paper writing, marked A, was produced and shown to R. P. H., and is the same as is referred to in his affidavit (or solemn affirmation made) before me this day of 19 .

W. B., etc.

First part.

Debts and claims which ought to be allowed without further evidence:—

Serial No.	Names of Creditors.	Addresses and descriptions.	Particulars of Debts or Claims.	Amount claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				Rs. A. P.	Rs. A. P.	

Second part.

Debts and claims which ought to be proved by the creditors:—

Serial No.	Names of Creditors.	Addresses and descriptions.	Particulars of Debts or Claims.	Amount claimed.
				Rs. A. P.

No. 27.—*Notice to Creditors of allowance of Debt.*

[Rule 51.]

(*For General Heading, see Rule 3.*)

(Place and date.)

Sir,

The debt claimed by you in this matter has been allowed by the Judge at the sum of Rs. (if part only allowed add) if you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, etc., as in the next form.

I am, etc.,

R. P. H.,

Official Liquidator.

To Mr. P. R.

No. 28.—*Notice to Creditors to come in and prove their Debt.*

[RULE 52.]

(*For General Heading, see Rule* 3.)

(Place and date.)

SIR,

You are hereby required to come in and prove the debt claimed by you against the abovenamed company, by filing your affidavit, and giving notice thereof to me on or before the day of next, and you are to attend in person or by your Advocate (or Pleader) on the day of 19 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim.

Dated this day of 19 .

R. P. H.,

To Mr. P. R. *Official Liquidator.*

No. 29.—*Affidavit of Creditor in proof of Debt.*

[RULE 52.]

(*For General Heading, see Rule* 3.)

I, S. T. of, etc., make oath (or solemnly affirm) and say as follows :—

1, The abovenamed company was on the day of 19 , the date of the order for winding up the same, and still is, justly and truly indebted to me in the sum of Rs. for, etc. (Describe shortly the nature of the debt and exhibit any security for it ; and in case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.)

2. I have not, nor hath nor have, any person or persons by my order or to my knowledge or belief for my use, received the sum of Rs. or any part thereof, or any security or satisfaction for the same or any part thereof. (If any security add) except the said (describe the security hereinbefore mentioned or referred to.)

Sworn (or solemnly affirmed), etc.

No. 30.—*Settlement by the Judge of Debts and Claims.*

[RULE 56.]

(*For General Heading, see Rule* 3.)

The debts and claims which have been allowed are set forth in the first schedule hereto and with the interest thereon and costs mentioned in the schedule are due to the person therein named and amount altogether to Rs.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to (the present date) date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been brought in by the persons therein named and have been disallowed.

The First Schedule above referred to.

First Part.

Debts and claims which carry interest :—

No.	Names of Creditors.	Addresses and descriptions.	Particulars of Debt.	Total Amount.
	J. L. ..	Of (Address)	On bills of exchange dated, etc.	Rs. A. P.
		Principal	Rs.	
		Interest at per cent. per annum from to the date of this certificate	Rs.	
		Cost of proof.		

Second Part.

Debts and claims which do not carry interest :—

No.	Names of Creditors.	Addresses and descriptions.	Particulars of Debt.	Interest on Principal.	Total due.
			Rs. A. P.	Rs. A. P.	Rs. A. P.
			Goods sold— 50 0 0		
			2 0 0		
40	W. R. .	Of (Address) .			
		Principal	Total Rs.	2 0 0	
		Cost of proof	Add—Total		54 0 0
			First part ...		
			Total, first and second parts.		

The Second Schedule above referred to.

No.	Names of Creditors.	Addresses and descriptions.	Particulars of claims.	Amount claimed.

Dated this day of 19 .

(*Signature of the* $\frac{\textit{Judge}}{\textit{Deputy Registrar}}$ *or District Judge*).

No. 31.—*Notice to Creditor to attend to receive Debt.*

[RULE 58.]

(*For General Heading, see Rule* 3.)

SIR,

Upon application at my office, No. , Street, Rangoon, on or after the instant, between the hours

of 10 and 4 o'clock, you may receive a cheque for the amount of your debt allowed in this matter as under :—

Principal	.. ..	Rs.
Interest	.. ..	"
Cost of proof	.. ..	"
Total	..	Rs.

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 19

R. P. H.,
Official Liquidator.

SIR,

Please to deliver to W. R. the cheque for Rs. referred to in the above letter as payable to me.

To S. T.,
Mr. R. P. H. *Creditor.*
Official Liquidator of the Company.

No. 32.—*Affidavit in support of List of Contributories.*

[RULE 57.]

(*For General Heading, see Rule* 3.)

I, R. P. H. of, etc., the Official Liquidator of the above-named company, make oath and say (or solemnly affirm) as follows :—

1. The paper writing now produced and shown to me and marked with the letter A, contains a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each ; and such is, to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said company, so far as I have been able to make out and ascertain the same.

2. I have, in the first part of the said list, marked A, distinguished the persons who are contributories in their own right.

3. I have, in the second part of the said list, marked A, distinguished the persons who are contributories as being representatives of, or being liable for the debts of. others.

Sworn (or solemnly affirmed), etc.

No. 33.—*List of Contributories referred to in Form No. 32.*

A.

In the matter, etc.

This list of contributories, marked A, was produced and shown to R. P. H., and is the same list of contributories as is referred to in his affidavit. Sworn (or solemn affirmation made) before me this day of 19

W. B., etc.

Serial No.	Name.	Address	Description	In what character included.	Number of shares (or extent of interest).

First Part.

Contributories in their own right:—

Serial No.	Name.	Address.	Description	In what character included.	Number of shares (or extent of interest).

Second Part.

Contributories as being representatives of, or liable for the debts of, others:—

Serial No	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

No. 34.—*Notice to Contributories of appointment to settle List of Contributories.*

[RULE 58.]

(*For General Heading, see Rule* 3.)

The Honourable Mr. Justice (or as the case may be) has appointed the day of 19 at of the o'clock in the noon at to settle the list of the contributories of the abovenamed company, made out and left at the Court of the said Judge by the Official Liquidator of the said company, and you are included in such list in the character, and for the number of shares (or extent of interest) stated below, and if no sufficient cause is shown by you to the contrary at the time and place aforesaid the list will be settled by the said Judge, including you therein.

Dated this day of 19 .

R. P. H.,
Official Liquidator.

To Mr. A. B., and to Mr. C. D., his *Advocate/Pleader*.

No. on List.	Name.	Address.	Description.	In what character included.	Number of shares (or extent of interest).

No. 35—*Affidavit of Service of Notice.*

[RULE 58.]

(*For General Heading, see Rule* 3.)

I, W. S. of, etc., clerk to Messrs. C. and D. of, etc., the attorneys of the Official Liquidator of the abovementioned company, make oath (or solemnly affirm) and say as follows :—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A, contain a

true copy of the list of contributories of the said company made out and led at the by the said Official Liquidator, on the day of 19 , and now on the file of proceedings of the said company, as I know from having, on the day of 19 , examined and compared the said schedule with the said list; and I have in the seventh column of the said schedule, marked A, set forth the names and addresses of the advocates or pleaders who have entered appearances for any of the contributories named in the said list.

2. I did, on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked B, upon each of said respective persons whose names, addresses, and descriptions appear in the second, third and fourth columns of the said schedule, marked A, except that in the tabular form at the foot of such copies, respectively I inserted the number on list, name, address, description, in what character included and number of shares (or extent of interest) of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule, marked A.

3. I served the said respective copies of the said notice by putting such copies respectively, duly addressed to such persons respectively or their advocates or pleaders, according to their respective names and addresses appearing in the said schedule, and marked A, and with the proper postage stamps affixed thereto as prepaid letter, into the Post Office receiving house No. , in Road/Street, Rangoon (or as the case may be) between the hours of and of the o'clock in the of the said day of

Sworn (or solemnly affirmed). etc.

No. 36.—*The Schedule referred to in Form No.* 35.

A.

(*For General Heading, see Rule* 3.)

This schedule, marked A, was produced and shown to W. S., and is the same schedule as is referred to in his affidavit.

Sworn (or solemnly affirmed) before me this
day of 19 .

W. B., etc.

No. on List.	Name.	Address.	Des cripti n.	In what character included.	Number of shares (or extent of interest)	Names and addresses of Advocates or Pleaders who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S. to which this schedule is an exhibit.
1	2	3	4	5	6	

No. 37.—*Supplemental List of Contributories and Affidavit in support.*

[Rule 58.]

(*For General Heading, see Rule* 3.)

I, R. P. H. of, etc., the Official Liquidator of the abovenamed company, make oath (or solemnly affirm) and say as follows .—

1 Since leaving at the office of
the list of the contributories in the matter, on the
day of . 19 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shown to me, and marked with the letter B, are or have been holders of shares (or members) of the said company, and to the best of my judgment, information and belief, such persons are contributories of the said company.

2. The said supplemental list, marked B, contains the names of such persons, together with their respective addresses, and the number of shares (or extent of interest) to be attributed to each ; and such list is, to the best of my knowledge, information and belief true and accurate.

3. I have, in the first part of the said list, marked B, distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list, marked B, distinguished such of the said persons as are contributories as being representatives of, or being liable for, the debts of others.

Sworn (or solemnly affirmed), etc.

No. 38.—*Supplemental List of Contributories referred to in Form No. 37.*

B.

(*For General Heading, see Rule* 3.)

This supplemental list of contributories, marked B, was produced and shown to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit.

Sworn (or solemn affirmation made) before me, this day of 19 .

W. B., etc.

NOTE —This supplemental list is to be made out in the same form as the original list, Form No. 33.

No. 39.—*Settlement by the Judge of the List of Contributories.*

[RULE 59.]

(*For General Heading, see Rule* 3.)

The result of the settlement of the list of the contributories of the abovenamed company, made out and left at the office of the by the Official Liquidator of the said company, on the day of 19 , pursuant to the above Act and the General Order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate, is as follows:—

1. The several persons, whose names are set forth in the second column of the First Schedule hereto, have been included in the said list of contributories as contributories of the said company in respect of the number of shares (or extent of interest) set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the first list as are contributories in their own right. I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of, or being liable to, the debts of others.

2. The several persons whose names are set forth in the second column of the said schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said first and second schedules, set forth, opposite the names of each of the said several persons respectively, the date when such person was included in, or excluded from, the said list of contributories.

The First Schedule above referred to.

First Part.

Contributories in their own right :—

Serial No. in List.	Name.	Address.	Des-cription.	In what character included.	Number of shares (or extent of interest).	Date when in-cluded in the list.

Second Part.

Contributories as being representative, of, or liable to, the debts of others :—

Serial No. in List.	Name.	Address.	Des-cription.	In what character included.	Number of shares (or extent of interest).	Date when in-cluded in the list.

The Second Schedule above referred to.

Serial No. in List.	Name.	Address.	Des-cription.	In what character proposed to be in-cluded.	Number of shares (or extent of interest).	Date when ex-cluded from the list.

Dated the day of 19

(Signature of the Judge or District Judge.)

No. 40.—*Order on Application to vary List.*

[RULE 57.]

(*For General Heading, see Rule* 3.)

Upon the application of W. N. to review the list of contributories of the said company, in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom, and upon hearing advocates, etc., and upon reading, etc., it is ordered that the name of the said W. N. be excluded from the said list of contributories (or the Court doth not think fit to make any order on the said application, except that the said W. N. do pay to R. P. H., the Official Liquidator of the said company, his costs of this application to be taxed by the taxing officer in case the parties differ (or in the case of a District Court the sum of Rs.) for his costs of this application.

No. 41.—*Affidavit of Official Liquidator in support of proposal for Call.*

[RULE 61.]

(*For General Heading, see Rule* 3.)

I, R. P. H. of, etc., the Official Liquidator of the above-named company, make oath (or solemnly affirm) and say as follows :—

1. I have, in the schedule now produced and shown to me, and marked with the letter A, set forth a statement showing the amount due in respect of the debts allowed against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of Rs. or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of Rs. and no more. There are no other assets belonging to the said company, except the amounts due from certain of the said contributories of the said company, and to the best of my information and belief it will be impossible to realize in respect of the said amounts more than the sum of Rs. or thereabouts.

3. It appears by the certificate of the Honourable Mr. Justice (or as the case may be) dated the day of 19 , that persons have been settled on the list of contributories of the said company, in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges and expenses of and incidental to the winding up the affairs thereof, I believe the sum of Rs. will be required, in addition to the amount of the assets of the said company mentioned in Schedule A and the said sum of Rs. .

5. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required, as before mentioned, it is necessary that a call of Rs. per share should be made.

Sworn (or solemnly affirmed), etc.

No. 42.—*Summons for intended Call*

[RULE 61.]

(*For General Heading, see Rule* 3.)

Let all parties concerned attend at on day the day of 19 at of the clock in the noon, on the hearing of an application on the part of the Official Liquidator of the abovenamed company, that a call to the amount of Rs. per share may be made on all the contributories (or if upon any particular class specify the same) of the said company.

This summons was taken out by A. B. of , *Advocate*/*Pleader* for the said Official Liquidator.

To Mr. A. B. of, etc., a contributory of the said company, proposed to be included in the said call.

No. 43.—*Advertisement of intended Call.*

[Rule 61.]

(*For General Heading, see Rule* 3.)

By direction of the notice is hereby given that the said Judge has appointed the day of 19 , at o'clock in the noon, at to make a call on all the contributories of the said company (*or as the case may be,*) and that the said call shall be for Rs. per share. All persons interested are entitled to attend at such day, hour, and place to offer objections to such call.

Dated this day of 19 .

No. 44.—*General Order for a Call.*

[Rule 62.]

(*For General Heading, see Rule* 3.)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading two orders, dated the day of 19 , and the day of 19 , the certificate of the dated the day of 19 , an affidavit of the said Official Liquidator filed 19 , and the exhibit, marked A, therein referred to, and an affidavit of filed 19 . It is ordered that a call of Rs. per share be made on all the contributories of the said company (*or as the case may be*). And it is ordered that each such contributory do, on or before the day of 19 , pay to the Bank of Bengal (or the branch of the Bank of Bengal, or in the case of District Court into the District Court at) to the account of the Official Liquidator of the company the amount which will be due from him or her in respect of such call.

No. 45.—*Notice to be served with the General Order for a Call.*

[Rule 62.]

(*For General Heading, see Rule* 3.)

The amount due from you, A. B., in respect of the cal made by the above (or within) order, is the sum of Rs. which sum is to be paid by you into the Bank of Bengal

Rangoon (or the Branch of the Bank of Bengal or in the case of a District Court into the District Court at), to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent, but this notice and copy of order must be produced at the Bank or to the Court upon such payment, and the cashier of the Bank or the Bailiff of the said Court will, upon receiving the same, deliver to you a certificate of the payment in numbered , signed by the said cashier or Judge. In order to prevent proceedings being taken against you for non-payment, you must immediately, upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me, as the Official Liquidator of the said company at my office, No. Street.

Dated this day of 19 .

R. P. H.,
Official Liquidator.

To Mr. A B.

No. 46.—*Affidavit in support of application for order for payment of Call due from Contributory.*

[RULE 63.]

(*For General Heading, see Rule* 3.)

I, R. P. H. of, etc., the Official Liquidator of the above-named company, make oath (or solemnly affirm) and say as follows :—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the calls of Rs. per share in pursuance of the order of the Judge in that behalf.

Dated the day of 19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

Sworn (or solemnly affirmed), etc.

The Schedule above referred to.

No. on List.	Name.	Address.	Description.	In what character included.	Amount due.

NOTE.—In addition to the above affidavit, an affidavit of the service of the order and notice (Nos. and 45) will be required.

No. 47.—*Order for payment of Call due from a Contributory.*

[RULE 63.]

(*For General Heading, see Rule* 3.)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading the order, dated the day of 19 , an affidavit of filed the day of 19 , and an affidavit of the said Official Liquidator, filed the day of 19 , it is ordered that C. D. of, etc. (or E. F. of, etc.. the legal personal representative of L. M., late of etc., deceased), one of the contributories of the said company (*or if against several contributories* the several persons named in the second column of the schedule to this order being respectively contributories of the said company) do, on or before the day of or within four days after service of this order, pay into the Bank of Bengal Rangoon (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at), to the account of the Official Liquidator of the Company (or to A. B., the Official Liquidator of the said company, at his office, No. Street, in the) the sum of Rs. . *If against legal personal representative, add* out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration if the said E. F. has in his hands so much to be administered; *or if against several contributories* the several sums of money set opposite to their respective names in the sixth column of the schedule hereto, such sum (or

sums) being the amount (or amounts) due from the said C. D. (or L. M.) or the said several persons respectively in respect of the call of Rs. per share made by the said order dated the day of 19 .

The Schedule referred to in the foregoing Order.

No. on List.	Name	Address.	Description.	In what character included.	Amount due.

No. 48.—*Notice to be endorsed on or served with every order, directing payment of money into the Bank of Bengal, Rangoon, or into the Court.*

[RULE 67.]

You can make the payment directed by the within (or above) order to the Bank of Bengal, Rangoon (or the branch of the Bank of Bengal, or in the case of a District Court into the District Court at), in person, etc. (as in the Form No. 37).

R. P. H.,
Official Liquidator.

No. 49.—*Certificate of payment of money into the Bank of Bengal or into Court.*

[RULE 67.]

No. *day of* 19

I hereby certify that C. D. of, etc., has this day paid into the Bank of Bengal, Rangoon, or into Court the sum of , to be placed to the credit of the Official Liquidator of the company, pursuant to an order dated the day of 19 .

For the Bank of Bengal, Rangoon, Rs.

H. M., *Cashier,*
or
Bailiff, District Court
(as the case may be).

No. 50.—*Affidavit of Service of order for payment of Call.*

[RULE 63.]

(*For General Heading, see Rule* 3.)

I, J. B., of, etc., make oath (or solemnly affirm) and say as follows :—

1. I did on the day of 19 , personally serve G. F. of in the of , etc., with an order made in this matter by , dated the day of 19 , whereby it was ordered (*set out the order in the past tense*) by delivering to and leaving with the said G. F., at , in the , a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order duly entered.

Sworn (or solemnly affirmed), etc.

No. 51.—*Affidavit on non-payment of money by order directed to be paid into the Bank of Bengal or into Court.*

[RULE 68.]

(*For General Heading, see Rule* 3.)

I, R. P. H., of, etc., the Official Liquidator of the above-named company, make oath and say as follows :—

I, G. S., the person named in an order made in the matter by the Honourable Mr. Justice (or as the case may be), dated the day of 19 , has not paid into the Bank of Bengal, Rangoon (or in the case of a District Court into the District Court at to the account of the Official Liquidator of the company, the whole or any part of the sum of Rs. as by the said order directed.

Or (in case of several parties) :—

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written,

and who have, respectively, been duly served with orders made in this matter by Honourable Mr. Justice . (or as the case may be) of the respective dates set opposite to their respective names in the said schedule have paid into the Bank of Bengal (or in the case of a District Court into the District Court at) to the account of the Official Liquidator of the company, the whole or any part of the several sums of money set opposite to their respective names in the schedule hereunder written, as by the said order, respectively, directed.

I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said Bank (or at the said Court) that such payment (or payments) has (or have) not been made, and seen the certificate of payment in, numbered (or several certificates of payment in, the numbers whereof, respectively, are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates) furnished by me to the cashier of the said Bank (or Bailiff of the said District Court at) for delivery to the said G. F. (or several persons, respectively) upon such payment (or payments) being made still in the hands of the cashier of the said Bank (or Bailiff of the said District Court). No notice (or notices) of such payment (or payments) having been made has (or have) been given to me by the said G. F. (or several persons, respectively).

Sworn (or solemnly affirmed), etc.

The Schedule above referred to.

Name.	Address	Description.	Amount.	Date of balance-order.	Number of certificate.

No. 52.—*Request to Invest Cash in Government Promissory Notes.*

[RULE 71.]

(*For General Heading, see Rule* 3.)

To the Agent of the Bank of Bengal.

SIR,

It appearing that the sum of Rs. cash is standing to the credit of the account of the Official Liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. , part thereof, in the purchase of per cent. Government Notes in the names of R. P. H. of, etc., the Official Liquidator of the said company, and to deposit such Government Notes in the Bank of Bengal, Rangoon (or the branch thereof, or in the case of a District into the District Court at), in the name and on behalf of the Official Liquidator. The said notes are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the Official Liquidator of the said company, and countersigned by a Judge of the Chief Court of Lower Burma (or by the Judge of District Court of , or under an order to be made by the said Judge).

Dated this day of 19 .

I am, Gentleman,
Your most obedient servant,
R. P. H.,
Official Liquidator.

Judge.
Deputy Registrar.
(Countersigned.)

No. 53.—*Request to the Court to Sanction the Investment of Cash in Government Promissory Notes.*

[RULE 71.]

(*For General Heading, see Rule* 3.)

Or to the Judge of the District Court at

SIR,

It appearing that the sum of Rs. cash is standing in the said Court to the credit of the account of myself, the Official Liquidator of the abovenamed company

you are hereby requested to authorise me to invest the sum of Rs. part thereof in the purchase of per cent. Government Promissory Notes in my name as such Official Liquidator and to deposit such Government Notes in the said Court in my name and on my behalf as such Official Liquidator. The said notes are not to be sold, transferred, or otherwise dealt with except upon a direction for that purpose signed by the Official Liquidator of the said company and countersigned by the Judge of your said Court.

Dated this day of 19

I am, Sir,
Your obedient servant,
R. P. H.,
Official Liquidator.

No. 54.—*Notice (or Advertisement) of Meeting of Creditors or Contributories.*

[RULE 73.]

(*For General Heading, see Rule* 3.)

Notice is hereby given that the Chief Court of Lower Burma (or the District Court of) has directed a meeting of the creditors (or contributories) of the abovenamed company to be summoned, pursuant to the above Act, for the purpose of ascertaining their wishes as to (*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding up of the said company), and that such meeting will be held on day the day of 19 , at o'clock in the noon, at in the , at which time and place all the creditors (or contributories) of the said company are requested to attend. (The said Court has appointed H. T., etc., to act as Chairman of such meeting.)

Dated this day of 19

R. P. H.,
Official Liquidator.

No. 55.—*Appointment of Proxy to Vote at Meeting of Creditors or Contributories.*

[RULE 74.]

(*For General Heading, see Rule* 3.)

I, W. S. of , in the . being a creditor (or contributory) of the abovenamed company, hereby appoint of , as my proxy to vote for me, and on my behalf at the meeting of the creditors (or contributories) of the said company, summoned by the director of the , to be held on the day of , and at my adjournment thereof.

As witness my hand this day of 19

signed by the said W. S. in the presence of J. M. of, etc.
W. S.

No. 56.—*Memorandum of Appointment of a Person to Act as a Chairman at Meeting of Creditors or Contributories.*

[RULE 75.]

(*For General Heading, see Rule* 3.)

Mr. H. T. of, etc., one of the creditors (or contributories) of the abovenamed company is appointed to act as Chairman of a meeting of the creditors (or contributories) of the said company, summoned by direction of the said Judge, pursuant to the above Act, to be held on the day of 19 , at o'clock in the noon, at and to report the result of such meeting to the said Judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors (contributories) of the said company as to (*state the object for which meeting called*) and at such meeting the votes of the creditors (or contributories) may be given either personally or by proxy.

Dated this day of 19

No. 57.—*Chairman's Report of Result of Meeting of Creditors or Contributories.*

[RULES 73, 74 AND 75.]

(*For General Heading, see Rule* 3.)

I, H. T., the person appointed by the Chief Court of Lower Burma (or District Court of) to act as Chairman of a meeting of the creditors or contributories of the abovenamed company, summoned by advertisement (or notice) dated the day of 19 , and held on the day of 19 , at do hereby report to the said Court the result of such meeting as follows :—

The said meeting was attended either personally or by proxy by creditors, to whom debts against the said company have been allowed, amounting in the whole to the value of Rs. (or by contributories holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned).

The question submitted to the said meeting was whether the creditors (or contributories) of the said company approved of the proposal of the Official Liquidator of the said company that, etc. (as the case may be), and wished that such proposal shall be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should (or should not) be adopted and carried into effect, or the result of the voting upon such question was as follows :—

The undermentioned creditors (or contributories) voted in favour of the said proposal being adopted and carried into effect.

Name of creditor (or contributory).	Address.	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company.

The undermentioned creditors (or contributories) voted against the said proposal being adopted and carried into effect.

Name of creditor (or contribntory).	Address.	Value of debt (or number of shares).	Number of votes conferred on each contributory by the regulations of the company.

Dated this day of 19 .

(Signed) H. T.,
Chairman.

No. 58.—*Memorandum of Sanction of Judge to Accepting Bill of Exchange.*

[Rule 76.]

(*For General Heading, see Rule* 3.)

The Judge has sanctioned the acceptance of this bill of exchange by the Official Liquidator on behalf of the said company.

No. 59.—*Memorandum of Agreement of Compromise, with a Contributory.*

[Rule 77.]

(*For General Heading, see Rule* 3.)

Memorandum of agreement entered into this day of 19 , between R. P. H. of, etc., the Official Liquidator of the abovenamed company, of the one part, and S. B. of, etc., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of said company, as a contributory in respect of shares in the said company; and whereas by an order made by , dated the day of 19 , a call of Rs. per share was made on all the contributories of the said company, and there is now due from the said S. B. to the

said company the sum of Rs. in respect of the said call; and whereas the said S. B. has proposed to pay to the said Official Liquidator the sum of Rs. by way of compromise, and in satisfaction and discharge of the said sum of Rs. , and of all liability whatsoever, as a contributory of the said company; and whereas the said Official Liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above Act, agreed to accept the same, subject to the sanction of the Court, and to the conditions and agreements hereinafter contained:—

Now it is hereby agreed by and between the said parties hereto:—

1. That the said Official Liquidator shall, before the day of next, apply to a Judge of the said Court, to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Judge the said S. B. shall, within day next after such sanction, pay to the said Official Liquidator the said sum of Rs. , and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said Official Liquidator on behalf of the said company, or in such manner as the said Judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has or may have against the said company in respect of the said shares, or the distribution of the assets of the said company, otherwise howsoever.

3. That the said sum of Rs. , and the transfer or surrender and release of the said shares and interest of the said S. B. as aforesaid shall be accepted by the said Official Liquidator as, and be deemed and taken to give to the said S. B., a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the company or the Official Liquidator thereof now has or may hereafter have, or be entitled to against the said S. B. in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4. That in case the agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said Official Liquidator and the said S. B. shall be remitted to

their original rights with respect to each other, as if this agreement had not been entered into.

5. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in respects perform the same on his part, the Official Liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof or, with the like sanction, to give notice to the said S. B., that he abandons this agreement, whereupon the same shall cease and determine, and the said Official Liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of Rs. or so much thereof as shall then remain due and owing unpaid, as if this agreement had not been entered into.

Witness to the signatures of the said R. P. H. and S. B.
C. D. of, etc.

R. P. H., Official Liquidator.
S. B.

No. 60.—*Memorandum of Sanction of Judge to Agreement of Compromise.*

[RULE 77.]

(*For General Heading, see Rule* 3.)

The Judge has sanctioned this agreement of compromise.

No. 61.—*Order or Memorandum of the Sanction of the Judge for Certain Acts to be Done by Official Liquidator.*

[RULE 78.]

(*For General Heading, see Rule* 3.)

The Judge doth hereby sanction (or has sanctioned) the following proceedings being taken (or acts being done) by the Official Liquidator of the abovenamed company, namely (*state the proceedings to be taken or acts to be done as*) the bringing or instituting and prosecuting an action in the name and on behalf of the said company, against, or defending an action brought against the said company by K. M., of, etc., to recover a debt or sum of Rs. alleged to be due from (or to) the said K. M., to (or from) the said company, etc.

No. 62.—*Form of Order Transferring Winding up Proceedings from Chief Court to District Court.*

[RULE 90.]

(*For General Heading, see Rule* 3.)

It is hereby ordered that all the winding-up proceedings in the above matter, together with all documents and papers thereto relating, and all moneys and securities standing therein to the credit of the Official Liquidator, be and they are hereby transferred from the said Chief Court to the District Court at and the said District Court shall hereafter have cognizance of all such proceedings and take charge of all such moneys and securities.

Dated this day of 19 .

Judge of Chief Court.

No. 63.—*Form of Order Transferring Winding up Proceedings from a District Court to Another.*

[RULE 90.]

(*For General Heading, see Rule* 3.)

It is hereby ordered that all the winding up proceedings in the above matter, together with all documents and papers relating thereto, and all moneys and securities standing therein to the credit of the account of the Official Liquidator, be and they are hereby transferred from the District Court at to the District Court at and the said last-mentioned District Court shall hereafter have cognizance of all such proceedings and take charge of all such money and securities.

Dated this day of 19

Judge of Chief Court.

No. 64.—*Summons for Persons to Attend to be Examined.*

[SEE SECTION 162 OF THE ACT.]

(*For General Heading, see Rule* 3.)

A. B. of, etc., and E. F. of, etc., are hereby severally summoned to attend at on the day of 19 , at of the clock in the noon, to be examined on the part of the said Official Liquidator (or of W. D. of, etc.) for the purpose of proceedings directed by the said Court to be taken before me in the above matter. And the said A. B. is hereby required to bring with him and produce at the times and place aforesaid, a certain indenture (*describe documents*) and all other books, papers, deeds, writings and other documents in his custody or power in any wise relating to the abovenamed company.

Dated this day of 19 . This summons was taken out by Messrs. C. and D. of , advocates for the Official Liquidator (or for the said W. D.).

No. 65.—*Declaration of the Company being Completely Wound up, and of the Official Liquidator having Passed his Final Account.*

[RULE 91.]

(*For General Heading, see Rule* 3.)

I hereby declare that R. P. H., the Official Liquidator of the abovenamed company, has passed his final account as such Official Liquidator, and that the balance of Rs. hereby found to be due to (or from) the said Official Liquidator has been paid in the manner directed by the order dated the day of 19 , and that the affairs of the said company have been completely wound up.

Dated this day of 19 .

Judge.
Deputy Registrar.

No. 66.—*Order to Dissolve the Company.*

[RULE 92.]

(*For General Heading, see Rule 3.*)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading an order dated the day of and the declaration of the Court dated the day of , whereby it appears that the affairs of the said company have been completely wound up, and that the balance of Rs. due from (or to) the Official Liquidator has been paid in manner directed by the said order. It is ordered that the said company be dissolved as from this day of 19 , and that the recognizance, dated the day of . 19 . entered into by the said Official Liquidator, together with W B. and S P. his sureties, be vacated

Judge.
Deputy Registrar.
District Judge.

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